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Reel
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317

Kangesser Foundation, 1961-1963.

COURT OF COMMON PLEAS

COUNTY OF CUYAHOGA

CLEVELAND 13, OHIO

SAMUEL H. SILBERT
CHIEF JUSTICE

December 6, 1961.

Rabbi Abba Hillel Silver,
19810 Shaker Blvd.,
Cleveland, Ohio.

Dear Friend:

Some weeks ago you were good enough to express a willingness to serve as a Trustee of the proposed Kangesser Family Fund. Knowing how busy you are, it is particularly gratifying to me that you are willing to take the time to help Charles and Robert Kangesser in their desire to use their funds on behalf of the community's welfare.

The Kangesser brothers and I have been in consultation from time to time regarding this matter. They are aware of your readiness to serve and have informed me more than once of their desire to take advantage of your willingness to serve. However, the matter has not come to a definite decision due to illness in the family and the further fact that their plans as to funds to be allocated are not yet fully completed.

My purpose in writing you this letter is to let you know that the Kangessers have not brought this matter to a head as yet, and to ask you to be patient until a decision is reached. In the meantime please be assured of my deepest appreciation for your kindly consideration and your willingness to respond.

With sincerest regards to you and yours, I am,

Most cordially yours,

Samuel H. Silberch

SHS/h

Schweid and Rini
Attorneys and Counsellors at Law
Bulkeley Building
Cleveland 15, Ohio

Telephone 241-1010
Cable Address
S and R

January 3, 1962

Dr. Abba Hillel Silver
The Temple
East 105th & Silver Park
Cleveland 6, Ohio

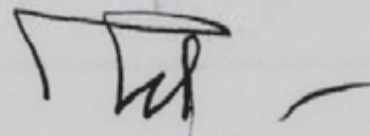
Re: Kangesser Foundation

Dear Dr. Silver:

Enclosed herewith please find a copy of a letter which I have this day written to Mr. Robert E. Kangesser in connection with the above noted matter.

With kindest regards, I remain,

Yours most sincerely,



Edward J. Schweid

EJS:rm
Enc.

Schweid and Rini
Attorneys and Counsellors at Law
Bulkeley Building
Cleveland 15, Ohio

Telephone 241-1010
Cable Address
S and R

January 3, 1962

Mr. Robert E. Kangesser
c/o Hotel Sterling
2921 Prospect Avenue
Cleveland, Ohio

Dear Mr. Kangesser:

We received the list of contributions from Mr. Morris that you made from your Foundation in 1958 and 1959. These are the ones to be included in this report.

Now he has also reported on the Kangesser Foundation donations in 1961. I do not have a report for 1960. The two trustees, including Dr. Abba Hillel Silver and the writer, were appointed in 1960 and accepted the appointment in 1960. This appointment continued into 1961 and neither Dr. Silver or I were aware that these contributions were made in 1961.

If you feel disposed to having these contributions approved by the existing Board including yourselves, I will be pleased to arrange such a conference or Board meeting. Otherwise, the record will not show these contributions. Please advise me of your decision.

Sincerely,

Edward J. Schweid

EJS:rm

SENT: BY MESSENGER
CC: Dr. Abba Hillel Silver

2921 Prospect Avenue
Cleveland, Ohio

NOTICE OF MEETING OF MEMBERS

TO: Charles L. Kangesser
Robert E. Kangesser
Harry A. Kangesser
Edward J. Schweid
Rabbi A.H. Silver

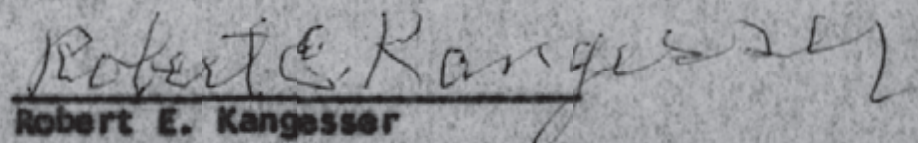
Notice is hereby given of a meeting of the Members of the Robert E., Harry A. and M. Sylvia Kangesser Foundation. This meeting is to be in place of the annual meeting. The time and place of the meeting is as follows:

PLACE: Office of the Jewish Community Federation,
2nd floor, Community Service Building,
1001 Huron Road, Cleveland, Ohio

DATE: March 13, 1962

TIME: 2:30 p.m.

The purpose of the meeting is (a) to determine the number of trustees and to elect trustees, and (b) to consider and take action on such other matters as may come before the meeting.


Robert E. Kangesser

Charles L. Kangesser

Dated: _____

*Kangesser
Foundation*

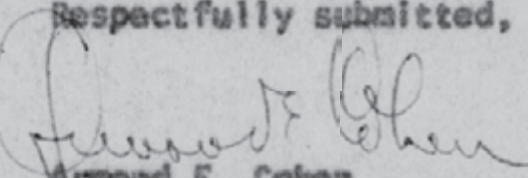
A meeting of the members of the Kangesser Foundation was held on Tuesday, March 13th, 1962, in the offices of the Jewish Community Federation in Cleveland, Ohio.

The meeting was called to order by the President of the Foundation, Mr. Robert Kangesser, at 2:40 p.m. Present were Robert Kangesser, Charles Kangesser, Rabbi A.H. Silver, members, and the following guests who had been invited to attend the meeting by Messrs. Robert and Charles Kangesser:- Rabbi A.E. Cohen, Mr. Maurice Saltzman, Mr. Irving Stone and Mr. Norman Sugarman. The President indicated that he had called the meeting, together with Mr. Charles Kangesser, by written notice sent to all Members and Trustees. In accord with the legal requirements of the Foundation the notice had been sent more than ten days prior to the date of the meeting. The President asked Rabbi Cohen to serve in a secretarial capacity to record the Minutes.

Mr. Robert Kangesser stated that the purpose of this meeting was to consider the election of additional members of the Kangesser Foundation. Rabbi A.H. Silver moved that three additional members be elected. The motion was seconded by Mr. Charles Kangesser and Mr. Robert Kangesser and was unanimously adopted. Rabbi Silver then moved that Rabbi A.E. Cohen and Messrs. Maurice Saltzman and Irving Stone be elected as Members and Trustees of the Kangesser Foundation. The motion was seconded by Messrs. Robert and Charles Kangesser and the nominees proposed were unanimously elected, as Members and Trustees of the Kangesser Foundation. Rabbi Silver moved to recommend to the Trustees that the Officers of the Foundation be authorized to disburse to religious and charitable organizations or for charitable purposes to individuals sums of money not to exceed the total amount of \$10,000 (Tenthousand dollars) annually, without the advice and approval of the Trustees. This motion was seconded by Charles Kangesser and was unanimously passed.

The meeting was then adjourned at 3:15 p.m.

Respectfully submitted,


Armond E. Cohen
Temporary Secretary

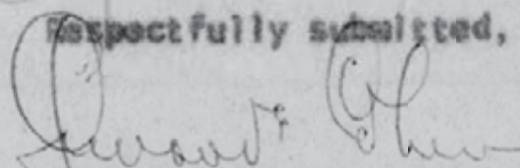
Minutes of a meeting of the Trustees of the Kangerer Foundation held on Tuesday, March 13, 1962, at 3:20 p.m. in the offices of the Jewish Community Federation in Cleveland, Ohio.

In attendance at the meeting were the following Trustees:- Charles Kangerer, Robert Kangerer, Rabbi A.E. Cohen, Mr. Maurice Saltzman, Rabbi A.H. Silver and Mr. Irving Stone. Mr. Norman Sugarman was invited to be present as a guest.

Rabbi Cohen moved that the Trustees approve the recommendation made by the Members of the Foundation to the Trustees authorizing the Officers of the Foundation to disburse funds of the Foundation for religious and charitable purposes in an amount not to exceed the total of \$10,000 (Tenthousand dollars) annually, without the advice and approval of the Trustees. This motion was seconded by Rabbi A.H. Silver and was unanimously adopted.

The meeting of the Trustees was adjourned at 3:20 p.m.

Respectfully submitted,


Armond E. Cohen
Temporary Secretary

AEC/GY

2921 Prospect Avenue
Cleveland, Ohio

NOTICE OF MEETING OF MEMBERS

TO: Charles L. Kangesser
Robert E. Kangesser
Harry A. Kangesser
Edward J. Schweid
Rabbi A. H. Silver


Notice is hereby given of a meeting of the Members
of the Robert E., Harry A. and M. Sylvia Kangesser Foundation.
This meeting is to be in place of the annual meeting. The
time and place of the meeting is as follows:

PLACE: Office of the Jewish Community Federation,
2nd floor, Community Service Building,
1001 Huron Road, Cleveland, Ohio

DATE: March 13, 1962

TIME: 2:30 P.M.

The purpose of the meeting is (a) to determine the
number of trustees and to elect trustees, and (b) consider
and take action on such other matters as may come before
the meeting.


Robert E. Kangesser

Robert E. Kangesser

C. L. Kangesser

Charles L. Kangesser

Dated: _____

May 22, 1962

Rabbi A. H. Silver
The Temple
University Circle at Silver Park
Cleveland 6, Ohio

Dear Rabbi Silver:

At the request of the Messrs. Robert and Charles
Kangesser, a meeting of the trustees of the
Kangesser Foundation is called for Tuesday,
May 29, 1962 at 2:00 P. M. at the Sterling
Hotel.

Very sincerely,

Armond E. Cohen

Armond E. Cohen
Temporary Secretary

AEC:pkg

NOTICE OF MEETING OF THE TRUSTEES

OF

THE ROBERT E., HARRY A., AND M. SYLVIA KANGESSER FOUNDATION

TO: Robert E. Kangesser,
Charles L. Kangesser,
✓ Rabbi Abba Hillel Silver,
Rabbi Armond E. Cohen,
Judge Samuel H. Silbert,
Maurice Saltzman,
Irving Stone,
Edward Schweid,
~~KANGESSER, KANGESSER~~
David Kangesser,

Notice is given of the calling of a regular meeting of the Trustees of THE ROBERT E., HARRY A., AND M. SYLVIA KANGESSER FOUNDATION to be held at 2:30 P.M. on July 3, 1962 at 2921 Prospect Avenue Cleveland, Ohio.

The meeting will be held for the following purposes:

1. To hear reports on the activities of the FOUNDATION;
2. To consider additional grants or gifts to be made by the FOUNDATION;
3. To consider such other matters as may properly come before the meeting;

C. A. Kangesser

ASSISTANT--SECRETARY

THE ROBERT E., HARRY A. AND M. SYLVIA KANGESSER FOUNDATION
STATEMENT OF ASSETS AND LIABILITIES AS OF DECEMBER 31, 1961

ASSETS

1. Cash in banks -- commercial		
a. Cleveland Trust Company		\$ 47,750.89
2. Cash in banks -- savings		
a. Cuyahoga Savings & Loan	\$ 25,390.63	
b. Union Savings & Loan	25,416.98	
c. Third Federal Savings & Loan	25,653.08	
d. Citizens Savings & Loan	25,156.23	
e. Women's Federal Savings & Loan	25,309.95	
f. Broadview Savings & Loan	25,591.60	
g. Second Federal Savings & Loan	25,156.28	
h. Ohio Savings & Loan	10,000.00	
i. Cleveland Trust Company	<u>192,775.05</u>	\$385,449.80
3. Interest receivable		
a. On Palestine Economic Corp. (5% note)	\$ 1,173.23	
b. On State of Israel Bonds	938.75	
c. On mortgages	<u>686.82</u>	\$ 2,798.80
4. Note receivable		
a. Palestine Economic Corp. \$50,000 (renewed 1960)		\$ 50,000.00
5. Mortgages receivable		
a. Over-Lee Realty, 1946 Lee Road	\$ 19,563.68	
b. Speco Industries, 1115 East 152nd St. Mortgage East 260th St., Euclid	35,924.93	
c. Frank & Ervin Brown and Marvin Glazer, 23007 Fairmount Blvd., Beachwood, Mortgage on S.L. 257/281/285/286/288, Fairmount-Green Subdivision	8,400.00	
d. Julius & Elma Janulis, 17316 Heff Road	4,856.64	
e. Frank Brown, 23007 Fairmount Blvd., Beachwood; Frank Brown, Ervin Brown, Marvin Glazer, Sarah Brown, Kay Brown, Fay Glazer, S.L. 289 Fairmount-Green	<u>4,000.00</u>	\$ 72,747.25
6. Corporate shares		
a. Palestine Economic Corp., 708 com. shs. at cost (Mkt. 6/28/62: 15-1/8 bid, 15-5/8 asked)		\$ 5,600.00
7. Bonds		
a. State of Israel - 3-1/2s	\$ 45,000.00	
b. State of Israel - 4s	<u>1,000.00</u>	\$ 46,000.00
8. Unimproved real estate*		
a. Brush Estate--155.4145 acres, frontage on Brush Rd., Richmond Rd. and Euclid Ave. Parcel #648-41-1; 648-51-1; 648-53-1	\$ 10,412.77	
b. Lake Shore Blvd. (near Heff Rd.) parcel #113-6-2 (donated by HAK, 1956) 125.68'x230'	3,050.00	
c. Fairmount-Green Subdivision, Elmhurst Drive, #741-7-88; Green Road, #741-7-98-99; Ranch, #741-8-29, 30, 57 Edgewood, #741-8-57; Rone, 741-9-20	<u>10,167.50</u>	\$ 23,630.27

LIABILITIES

9. Accrued real estate taxes	\$ 3,054.26
10. Capital	\$630,962.84

*Land is shown on the books at donor's basis, if contributed, and at Foundation cost, if purchased.

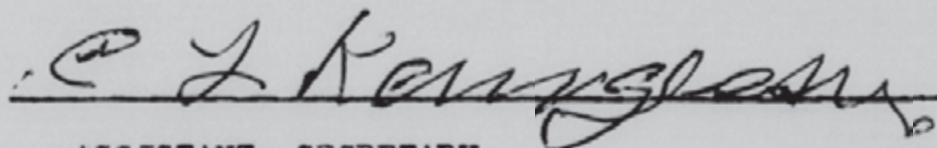
NOTICE OF MEETING OF THE TRUSTEES

OF

THE ROBERT E., HARRY A., AND M. SYLVIA KANGESSER FOUNDATION

TO: Robert E. Kangesser,
Charles L. Kangesser,
✓ Rabbi Abba Hillel Silver,
Rabbi Armond E. Cohen,
Judge Samuel H. Silbert,
Maurice Saltzman,
Irving Stone,
Edward Schweid,
David Kangesser,

Notice is given of the calling of a regular meeting
of the Trustees of THE ROBERT E., HARRY A., AND M. SYLVIA
KANGESSER FOUNDATION to be held at 2:30 P.M. on September
4, 1962 at 2921 Prospect Avenue, Cleveland, Ohio to
consider such matters as may properly come before the
meeting.



ASSISTANT- SECRETARY

Foundation may take which are contained in the articles of

These are various limitations upon the sections when the

Internal Revenue Law).
corresponding provision of any future United States
of the Internal Revenue Code of 1954 (or the
except organizations under section 501(c)(3)
of organizations to organizations that qualify as
purposes, including, for such purposes, the making
charitable, religious, educational and scientific
said corporation is organized exclusively for

Revenue Code, as follows:

conformity with the applicable exemption provisions of the Internal

that the purposes of the Foundation are stated in general terms, in

By way of background, your attention is called to the fact

approval of Robert E. Kanger and Charles L. Kanger.

tion which are enclosed herewith and which I believe have the

into legal and related matters, I have prepared a series of recommenda-

based upon the views expressed to me and my own exploration

particularly Robert E. Kanger and Charles L. Kanger.

the Foundation, and I have conferred with some of the Trustees,

and practical considerations pertaining to the future operations of

documents under which the Foundation is established and the legal

In accordance with this suggestion, I have reviewed the basic

status of the Foundation as a tax exempt institution.

tion, consistent with the legal requirements for maintaining the

of clarifying the policies and methods of operations of the Founda-

was suggested that I give consideration to the development of means

At the last meeting of the Trustees of this Foundation, it

From: Norman A. Engelman

Foundation

To the Trustees of the Robert E. Kanger and M. Sylvia Kanger

September 4, 1968

Incorporation of the Foundation and which are in conformity with limitations and requirements under the Internal Revenue Code.

Under the Articles of the Foundation, as well as a matter of basic law, the Trustees have the responsibility and authority for the operations of the Foundation. There are presently nine Trustees authorized to be elected, the same number as are presently serving (i.e. there are no vacancies). The Trustees are elected by the members of the Foundation, who at the present time are, I believe, the same as the Trustees. In my opinion, the Trustees have full authority to adopt the recommendations attached hereto.

42:75

encl.



Norman A. Sugarman



RECOMMENDATIONS SUBMITTED TO THE TRUSTEES OF THE
ROBERT E., HARRY A. AND M. SYLVIA KANGESSER FOUNDATION

RECOMMENDATION I.

It is recommended that the following Resolution be adopted
by the Trustees:

RESOLVED, That an Investment Committee of
the Board be and hereby is established for the
following purposes and with full authority to
carry out the same:

- (a) to make recommendations to the Trustees
with respect to the investment policies
of the Foundation;
- (b) to act for the whole Board of Trustees
between meetings of the whole Board of
Trustees with respect to any investment
decisions (either the purchase, sale,
exchange or other disposition or re-
investment) which in the opinion of the
majority of the Investment Committee re-
quires action before a meeting of the
full Board of Trustees; and
- (c) to advise and consult with the officers
and/or employees of the Foundation with
respect to investments of the Foundation
when the advice of the Trustees is desired.

FURTHER RESOLVED, That the following Trustees
are appointed to the Investment Committee to serve
so long as each shall be a Trustee or until his

successor on such committee is designated by a majority of the Trustees:

Robert E. Kengesser
Charles L. Kengesser
David Kengesser
Maurice Saltzman
Edward J. Schvaid
Irving Stone

FURTHER RESOLVED, That any two of the following:

Robert E. Kengesser
Charles L. Kengesser
David Kengesser
Any other person who is President,
Vice President, Treasurer or
Secretary at the time of the
Robert E., Harry A. and M. Sylvia
Kengesser Foundation,

be and they hereby are authorized to sign the name of the Foundation and to perform all acts necessary to effect the sale, transfer or other disposition from time to time of any shares, registered bonds, subscription rights, warrants, notes and other property or securities standing or registered in the name of the Robert E., Harry A. and M. Sylvia Kengesser Foundation, and to issue necessary powers of attorney for the same.

The first of the above Resolutions is recommended to be adopted for the reason that the appointment of an Investment Committee will provide for more efficient handling of the investment affairs of the Foundation and will make available to the Foundation the services of those Trustees who are in the best position to assist the Foundation with regard to investments and without the necessity of meetings of the full Board of Trustees.

The second Resolution is merely for the purpose of recording the authorization of the persons specified to execute transfer documents which are required to be executed from time to time on behalf of the Foundation. Transfer agents, particularly in connection with the transfer of stocks or other securities, require evidence of such authority and the above Resolution (when a certified copy is submitted by the Secretary of the Foundation to a transfer agent) should be sufficient to enable the Foundation to make transfers of securities without further legal difficulties.



RECOMMENDATION II.

It is recommended that the following Resolutions be adopted:

RESOLVED, That a Distributions Committee of the Board be and hereby is appointed for the following purposes with full authority to carry out the same:

- (a) to make recommendations to the Trustees with regard to policies to be followed by the Foundation in distributing income and/or principal pursuant to the purposes of the Foundation;
- (b) to act for the whole Board of Trustees in authorizing contributions from income of the Foundation in cases in which approval of the Board would otherwise be required and in which, in the opinion of a majority of the members of the Distributions Committee, it is advisable to take action before a full meeting of the Board of Trustees; and
- (c) to advise and consult with the officers and/or employees of the Foundation with respect to distributions when advice of the Trustees is desired.

FURTHER RESOLVED, That the following Trustees are appointed to the Distributions Committee, each to serve while he is a Trustee or until his successor

has been designated by the Board of Trustees:

Robert E. Kangesser
Charles L. Kangesser
David Kangesser
Judge Samuel Silbert
Rabbi Abba Hillel Silver
Rabbi Armond Cohen

FURTHER RESOLVED, That Robert E. Kangesser and Charles L. Kangesser as members of the Distribution Committee are authorized to distribute, on behalf of the Foundation, such amounts from the income of the Foundation within any calendar year as shall not exceed \$10,000 to organizations which qualify as organizations to which deductible charitable contributions may be made within the meaning of §170 of the Internal Revenue Code and which are proper recipients of contributions within the purposes of this Foundation, such authority to be exercised by Robert E. Kangesser and Charles L. Kangesser jointly without further approval of the Distributions Committee, and any such distributions made by them pursuant to this authority shall be reported at the next meeting thereafter of the Distributions Committee or the Trustees.

The above Resolutions are recommended for adoption for the following reasons. It is necessary that the policies of this Foundation with respect to contributions of income and principal be

clarified and this is an appropriate function for a selected group of the Trustees working together with the executives of the Foundation. The policy to be developed by the above Distributions Committee should be submitted to the full Board of Trustees for approval.

It is also unnecessary for the full Board to meet so frequently and to take its time with respect to relatively small contributions which fall within the purposes of the Foundation and for this reason a Distributions Committee and particularly Robert E. Kengesser and Charles L. Kengesser are authorized to make the distributions indicated in the above Resolutions. The authorization to Robert E. Kengesser and Charles L. Kengesser is a reaffirmation of a policy previously established by the Board.

The purpose of establishing the Distributions Committee is not to circumvent the full Board of Trustees, but rather to provide a practical method for handling distributions by the Foundation; it is contemplated, of course, that distributions will still be made within the framework or policies determined by the full Board.

NOTICE OF MEETING OF THE TRUSTEES

OF

THE ROBERT E., HARRY A., AND M. SYLVIA KANGESSER FOUNDATION

TO: Robert E. Kangesser,
Charles L. Kangesser,
✓ Rabbi Abba Hillel Silver,
Rabbi Armond E. Cohen,
Judge Samuel H. Silbert,
Maurice Saltzman,
Irving Stone,
Edward Schweid,
David Kangesser,

Notice is given of the calling of a regular meeting of the Trustees of THE ROBERT E., HARRY A., AND M. SYLVIA KANGESSER FOUNDATION to be held at 2:30 P.M., on December 4, 1962 at 2921 Prospect Avenue, Cleveland, Ohio to consider such matters as may properly come before the meeting.

RE Sabatka

For

CHARLES L. KANGESSER
ASSISTANT--SECRETARY



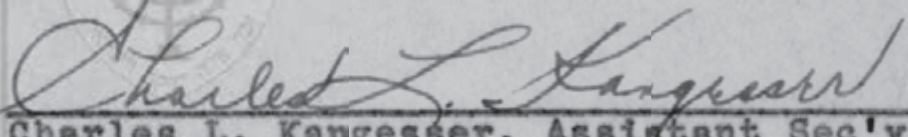
NOTICE OF MEETING OF MEMBERS OF THE HARRY A., ROBERT E.
AND M. SYLVIA KANGESSER FOUNDATION

TO:	Robert E. Kangesser	Charles L. Kangesser
	David Kangesser	Rabbi Abba Hillel Silver
	Rabbi Armond E. Cohen	Irving Stone
	Hon. Samuel H. Silbert	Maurice Saltzman

Due to the illness of the President of the Foundation, Robert E. Kangesser, the annual meeting of members originally called for January 7, 1963 was adjourned to be held now on January 30, 1963 at 4:00 p.m. at 2268 Ardleigh Drive, Cleveland Heights, Ohio.

As stated in the original notice of the meeting, the purposes of the meeting are:

1. To receive reports of officers as to the operations of the Foundation.
2. To elect trustees.
3. Such other business as may properly come before the meeting.



Charles L. Kangesser, Assistant Sec'y.

BAKER, HOSTETLER & PATTERSON
COUNSELLORS AT LAW
UNION COMMERCE BLDG.
CLEVELAND

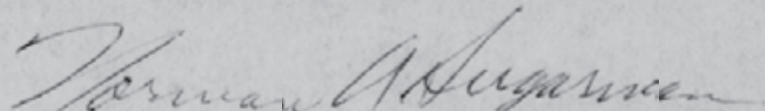
March 8, 1963

To the Board of Trustees of the HARRY A., ROBERT E., and
M. SYLVIA KANGESSER FOUNDATION

At the meeting of the Trustees on December 4, 1962,
the following resolution was adopted:

RESOLVED, That counsel for the Founda-
tion be and hereby is instructed to deter-
mine the nature and extent of the legal
liability of Trustees of the Foundation
whether acting as Trustees, members of
the committee, or otherwise, in all
aspects of their conduct in connection
with the Foundation and that counsel
report to the Board of Trustees in
writing on this matter.

Pursuant to the above resolution, the enclosed
memorandum has been prepared and is submitted herewith
for the information and guidance of the Trustees. I
believe that the memorandum covers the questions that
were raised ~~which~~ prompted the adoption of the above
resolution, but of course it should be understood that
the memorandum of necessity contains general rules and
that the application thereof in any particular situation
will depend upon all of the facts and circumstances. If
there are any questions I shall be glad to attempt to
answer them.


Norman A. Sugarman

42:mhc
Enc.

RESPONSIBILITIES OF A TRUSTEE OF
AN OHIO CHARITABLE CORPORATION*

I. STATUTORY RULES IMPOSED BY THE NON-PROFIT CORPORATION LAW.

In general, members, trustees, and officers of a non-profit corporation are not liable for "any obligation of the corporation."¹ However, in certain circumstances trustees of a non-profit corporation may be held personally liable.

A. False Reports

Specifically mentioned in the statute is the making or publishing of "any prospectus, report, circular, certificate, statement, balance sheet, exhibit or document respecting membership rights in, or the activities, assets, liabilities, earnings, or accounts of" a non-profit corporation which is false in any material way.² If such falsity is made knowingly and with intent to deceive, any person participating in the falsity is personally liable for any damage which is actually suffered and which proximately results from the falsity.³

The same liability is imposed upon any person who has charge of any books, minutes, records or accounts of a corporation and who knowingly and with intent to deceive makes a false entry,⁴ alteration or cancellation therein.

*This memorandum has been prepared for the information of Trustees as a general summary of state law. It does not attempt to state applicable rules under the Internal Revenue Code with regard to obtaining or maintaining tax exempt status.

1. Ohio Revised Code Ann. §1702.55 (A) (Page 1953). Hereinafter the Ohio Revised Code will be referred to by section number only.
2. §1702.54 (A)(1).
3. §1702.54 (B).
4. §1702.54 (A)(2) and (B).

However, the period of limitations on an action to enforce a liability in either of the above situations is four years⁵ from the time of the act.

In addition to the personal liability for resulting damage, a statutory penalty may be imposed on any person who participates knowingly in the preparation of a false or fraudulent report, certificate or statement required by the non-profit corporation⁶ law, the penalty being a fine of up to Ten Thousand Dollars.

B. Distributions.

Where a trustee votes for or assents to a distribution of assets to members contrary to law or the articles of incorporation, that trustee may be jointly and severally liable to the corporation up to the amount of such distribution in excess of the amount that could have been distributed without violation of the law or articles.⁷ Thus, the contents of the articles of incorporation in this connection become important. A typical provision might in substance provide that no distributions except for reasonable compensation⁸ for services rendered are to be made which are not in furtherance of the general charitable purposes of the corporation. In such a case, any distribution not in furtherance of the purposes of the corporation and not for reasonable compensation

5. §1702.54 (C).

6. §§1702.56 and 1702.99 (A).

7. §1702.55 (B)(1).

8. "Reasonable compensation" involves a question of fact and its determination should be approached in the case of a charitable corporation with a high regard for the charitable purposes of the organization.

for services rendered could subject a trustee who voted for or assented to such distribution to personal liability.

Also, the distribution of assets to persons other than creditors during the winding up of the affairs of the corporation, on dissolution or otherwise, without the payment or provision for payment of all known obligations of the corporation will cause a trustee voting for or assenting to such distribution to be liable to the extent that such obligations are not paid or for which payment has not been provided.⁹

However, no trustee can be held liable under either of the above-listed provisions concerning distributions if he, in determining the amount available for any such distribution, "in good faith relied on a financial statement prepared by an officer or employee of the corporation in charge of its accounts or certified by a public accountant or firm of public accountants, or in good faith considered the assets to be of their book value, or he followed what he believed to be sound accounting and business practice."¹⁰

The statutory period of limitations with respect to actions brought under these distribution sections is two years from the date of the violation.¹¹

C. Loans to Officers, etc.

Trustees who vote for or assent to the making of loans to an officer, trustee or member of the corporation other than in

9. §1702.55 (B)(2).

10. §1702.55 (B)(3).

11. §1702.55 (F).

the usual conduct of the corporation's affairs or in accordance with provisions in the articles of incorporation are personally liable for the amount of the loan with interest at the rate of six per cent per annum until such amount has been paid.¹²

D. Procedure and Extent of Liability.

In connection with the liabilities outlined above, the statute provides that where a trustee who is present at a meeting of the trustees at which action on any matter is authorized or taken and he has not voted for or against such action, it shall be presumed that he voted for the action unless his written dissent is filed with the secretary during the meeting or within a reasonable time after adjournment.¹³

Perhaps it is noteworthy too that while a trustee participating in the wrongful distributions or loans is liable for the entire damage which proximately results, any trustee against whom a claim is asserted and who is held liable for a wrongful distribution or loan is entitled to contribution on equitable principles from other trustees who participated in the wrongful act.¹⁴

E. Improper Exercise of Corporate Authority.

The statute also imposes a penalty upon any person who exercises or attempts to exercise any rights, powers or authority under the articles of a corporation after such articles have been cancelled, after the corporation has been dissolved, or after the period of existence of the corporation specified in its articles

12. §1702.55 (B)(3).

13. §1702.55 (C)

14. §1702.55 (E).

has expired. The penalty is a fine of not less than One Hundred
15
Dollars or more than One Thousand Dollars.

II. GENERAL RULES GOVERNED IN PART BY STATUTES AND IN PART BY
PRINCIPLES OF COMMON LAW.

A. In General

The trustee or officer of a charitable corporation is, because of his relationship to the corporation, subjected to certain "equitable" responsibilities. These responsibilities are most often termed "fiduciary duties," and they arise because the trustee has been placed in a position of trust or confidence. It is for a breach of a fiduciary duty or position of trust that the law holds trustees of the traditional trust and the directors or officers of the standard business corporation personally liable; and it is for just such a breach of duty that the trustees of a
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charitable corporation may be held liable. Basically, such duties consist of the duty to exercise due diligence or care in the administration of the corporation and the duty of complete loyalty to the corporation. The trustees are required to act always in good
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faith and with an eye single to the interests of the corporation.

15. §§1702.57 and 1702.99 (B).

16. See e.g., Ray v. Homewood Hospital, Inc., 223 Minn. 440, 27 N.W. 2d 409 (1947); Boston v. Curley, 276 Mass. 549, 177 N.E. 557 (1931).

17. See generally, Restatement (Second), Trusts §§ 170, 174, (1959); 2 Scott, Trusts §§ 170, 174 (1956); 13 Ohio Jur. 2d, Corporations § 964 (1955); 54 Ohio Jur. 2d, Trusts §§ 185, 186 (1962).

While the general legal principle is well established that the trustees of an ordinary trust and the directors of the usual business corporation are required to exercise care and diligence in the administration of the trust or corporation, the law is not so precise with respect to the amount or degree of care and diligence required. Generally, the degree of care required of the trustee in the usual trust situation is expressed as follows: he is under a duty to exercise that degree of care and skill which an ordinarily prudent man would exercise in dealing with his own¹⁸ property. Unusual ability and extraordinary care are not required, but if a trustee has greater skill than a man of ordinary¹⁹ prudence, he is under a duty to exercise that skill which he has. And, good intentions will not normally relieve the trustee from²⁰ responsibility for his negligent conduct.

In contrast, the degree of care required of a director of the usual business corporation is normally expressed as a less stringent test; namely, he is required to exercise only that degree of care which would be exercised by ordinarily careful and²¹ prudent men acting under the same or similar circumstances.

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18. See e.g., Morris v. Mull, 110 Ohio St. 623, 144 N.E. 436 (1924); Harvard College v. Amory, 9 Pick. 446 (Mass. 1830). See also 2 Scott, Trusts § 174 (1956); 54 Ohio Jur. 2d Trusts § 186 (1962).
19. See e.g., Cox v. John, 32 Ohio St. 532 (1877). See also 2 Scott, Trusts § 174 (1956).
20. Moeller v. Poland, 80 Ohio St. 418, 89 N.E. 100 (1909).
21. See e.g., Mason v. Moore, 73 Ohio St. 275, 76 N.E. 932 (1906).

The reason often stated in support of this less stringent test is that it would place too great a burden on the directors to expect them to render the same attention and diligence to the corporation's affairs as they would to their own.²²

Ohio courts have not ruled on what standard of care will be required of the trustees of a charitable corporation. Further, there are only a few cases which have passed on this point²³ in other jurisdictions, and those cases seem to be in conflict. However, perhaps the two standards as applied to a charitable corporation are not very different, since application of even the lesser standard is said to depend in each instance upon all of the circumstances of the case, including the character of the activity²⁴ in which the corporation is engaged.

But, whatever standard is adopted, the highest degree of care to which the trustee of a charitable corporation could normally be held is that required of the trustee of an ordinary trust, that is to say, he could not be held to any higher standard

22. See e.g., 12 Ohio Jur. 2d Corporations §488 (1955).

23. See and compare e.g., Ray v. Homewood Hospital, Inc., 223 Minn. 44, 27 N.W. 2d 409 (1947); Groome's Estate, 337 Pa. 250, 11 A. 2d 271 (1940); Graham Bros. Co. v. Galloway Woman's College, 190 Ark. 692, 81 S.W. 2d 837 (1935); Boston v. Curley, 276 Mass. 549, 177 N.E. 557 (1931).

24. See e.g., Goff v. Emde, 32 Ohio App. 216, 167 N.E. 699 (1928). See also, 13 Am. Jur., Corporations §§ 989-990 (1938).

of care and skill than that which an ordinarily prudent man would exercise in dealing with his own property, unless he possesses greater skill than a man of ordinary prudence and then he must exercise that skill which he has.

With respect to the duty of good faith and loyalty, there is no question that the standards are stricter than the morals of the market place. The trustee must act in accordance with the highest standards of integrity, good faith, openness and honesty.²⁵

For a breach of the duties described above, the trustee of a charitable corporation may be held personally liable for any losses or damage proximately caused by his default.

B. Delegation of Authority

To be binding and legal the acts of the trustees of a non-profit corporation must be performed collectively and not as individuals.²⁶ Individual trustees who act separately may be liable for damages resulting from their acts, since they are not considered to be acts of the board. However, it is clear that a charitable corporation, like a natural person, may be bound by giving its formal acceptance to the act of a person who assumed to act for it, such acceptance being termed a ratification. But,

25. See In re Stone, 138 Ohio St. 293, 302 - 303, 34 N.E. 2d 755 (1941); In re Rees, 53 Ohio L. Abs. 385, 85 N.E. 2d 563 (Ohio App. 1949). See also generally, 2 Scott, Trusts § 170 (1956); Restatement (Second), Trusts § 170 (1959).

26. State ex rel. Attorney General v. Peoples' Mutual Benefit Assoc., 42 Ohio St. 579 (1885).

the board of trustees can validly ratify only where the corporation²⁷ could have authorized the act in the first instance.

A board of trustees may utilize a committee system under which the acts of the committees may be ratified by the entire board. However, the board of trustees in order to ratify validly must have knowledge of all material facts at the time of ratifica-²⁸ tion. In light of this somewhat burdensome requirement, attention is called to Section 1702.33 of the Revised Code of Ohio, which provides for the authorization of committees to which authority of the board may be delegated. The statute reads in part as follows:

"The regulations may provide for the creation by the trustees of an executive committee or any other committee of the trustees, to consist of not less than three trustees, and may authorize the delegation to any such committee of any of the authority of the trustees, however conferred."²⁹

The statute also directs that each such committee shall serve only at the pleasure of the trustees, and shall be subject to the control and³⁰ direction of the trustees. Such a committee, unless otherwise

27. For a detailed discussion of the principle of ratification see 2 Fletcher, Corporations §§ 750 - 785 (1954); and Restatement (Second), Agency § 82 - 104 (1958). See also Hospital & Benevolent Ass'n. v. Arkansas Baptist State Convention, 176 Ark. 946, 4 S.W. 2d 933 (1928).

28. Standard Textile Products Co. v. Portchi, 23 Ohio L. Abs. (Ohio App. 1937); Union Mutual Life Insurance Co. v. McMillen, 24 Ohio St. 67 (1873). See also Restatement (Second), Agency § 91 (1958).

29. §1702.33 (A)

30. §1702.33 (C)

provided in the regulations, may act by a majority of its members at a meeting or by a writing or writings signed by all of its members, and an act or authorization of an act by any such committee is to be as effective for all purposes as the act or authorization of the trustees so long as the act ³¹ or authorization was within the authority delegated to the committee.

Thus, it would seem advisable that the code of regulations of a charitable foundation provide expressly for the creation of committees and the delegation of authority thereto. A recommended provision is as follows:

Committees. The Board of Trustees of the corporation may create an executive committee or any other committee of the Board of Trustees, to consist of not less than three Trustees, and may delegate to any such committee any of the authority of the Board of Trustees. Each such committee shall serve at the pleasure of the Board of Trustees, shall act only in the intervals between meetings of the Board of Trustees, and shall be subject to the control and direction of the Board of Trustees. Each such committee may act by a majority of its members at a meeting or by a writing or writings signed by all of its members. An act or authorization of an act by any such committee within the authority delegated to it shall be as effective for all purposes as the act or authorization of the Board of Trustees.

The rules of liability with respect to the relationship between the board as a whole and the members of a committee would seem to be fairly well settled. The members of a committee are of course individually liable for any damages resulting from improper conduct in which they participate. However, the trustees of the corporation who were not members of the committee are liable for the improper conduct of the members of the committee only if the

31. §1702.33 (D) and (E).

trustees were themselves negligent in some way.³² Thus, if the members of a committee are participating in improper conduct which would render them personally liable and the trustees knew or should have known of the improper conduct but did nothing about it, then the trustees themselves are guilty of negligence and are liable to the extent of the damages proximately caused by their negligence.

C. Investments and Related Activity

The Ohio non-profit corporation statute contains no specific definitions of the permissible boundaries within which trustees may invest without subjecting themselves to liability for losses. The only statutory limitation on investments and related activity, and that only on certain classes of investments, is a mandate that such investments and other activity must be (a) pursuant to the general purposes of the corporation and (b) subject to any limitations set forth in the articles.³³ If these requirements are met, the corporation under Ohio law may:

1. Acquire, hold, invest in, sell, exchange, transfer and dispose of property of any description;
2. Make contracts;
3. Form or acquire the control of other corporations whether non-profit or for profit;
4. Conduct its affairs in this state and elsewhere;

32. See e.g., Mason v. Moore, 73 Ohio St. 275, 76 N.E. 932 (1906).

33. §1702.12 (F).

5. Borrow money, and issue, sell, and pledge its notes, bonds and other evidence of indebtedness, and secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, and guarantee or secure obligations of any person;

6. Become a member of another corporation; and,

7. Do all things permitted by law and exercise all authority within the purposes stated in its articles or incidental thereto.³⁴

It is also recognized under Ohio law that a non-profit corporation needs considerable latitude in the investment of its funds for the purpose of obtaining income, for the statute states that a corporation may invest its funds not currently needed in carrying out its purposes in any shares or other securities of another corporation, profit or non-profit, business or under-taking irrespective of the purposes stated in its articles.³⁵ Such investments are of course subject to any specific prohibitions or limitations stated in the articles,³⁶ but in many cases there are no such prohibitions or limitations in the articles.

Normally, the articles and regulations of a charitable corporation are silent with respect to the standard of care required of a trustee in making investments; instead, they merely state

34. Ibid.

35. §1702.12 (G).

36. Ibid.

that it is the duty of the trustees to manage and control the property and assets so as to carry out the aims and purposes of the corporation. Such a provision, in effect, means that the general standards of care required of a trustee, which standards were discussed above, must be applied. Therefore, in general, with respect to investments, trustees will be required to exercise a degree of care and skill which is quite similar to that which an ordinarily prudent man would exercise in dealing with his own property.

Basically, it is the duty of the trustees to preserve the property of the corporation and to make it productive. This includes the duty to invest funds in such a way as to receive a reasonable income without improperly risking the loss of the principal.³⁷ The duty required involves three basic elements: (1) care, (2) skill, and (3) caution. A trustee must exercise a reasonable degree of care and skill in making the selection, and he must exercise the caution which a prudent man would exercise where a primary consideration is the preservation of the funds invested.³⁸

The conduct of trustees in authorizing an investment is to be judged as of the time when it was made and not as of some later time, since it would obviously be unfair to hold a trustee liable for a loss which he had no reason to foresee at the time of

37. For a discussion of the area of investments, see 3 Scott, Trusts §227 - 231 (1956). Although this discussion is geared principally to the duty of a trustee of the ordinary trust, most of the discussion is applicable to the trustee of a charitable corporation.

38. Id., at § 227.

the investment.³⁹

Before authorizing an investment, it is the duty of the trustee to use reasonable care and skill in obtaining information and advice as to the safety of the investment and the amount of expected income.⁴⁰ He may not, however, rely solely on the advice of others, for it is his duty to exercise his own judgment. And, if he possesses a skill greater than that of the ordinarily prudent man, he must exercise the skill which he has.⁴¹

It is virtually impossible to list the kinds of investments which are normally considered prudent, for the determination is one of fact in each case, and the surrounding circumstances may make an investment proper which would normally be improper and vice versa. On the other hand, certain types of investments are rather universally condemned. For example, it is improper for a trustee to purchase securities for the pure purpose of speculation, although the line between what constitutes speculation and what constitutes a prudent investment is difficult to ascertain and is almost never drawn in what seems to be the same place.⁴² A trustee cannot properly purchase securities on margin or buy bonds selling at a large discount, and he must reasonably diversify investments so as to minimize the risk of large losses.⁴³

39. See e.g., In re Rees, 53 Ohio L. Abs. 385, 85 N.E. 2d 563 (Ohio App. 1949).

40. Ibid.

41. See e.g., Cox v. John, 32 Ohio St. 532 (1877). See also 2 Scott, Trusts § 174 (1956).

42. See 2 Scott, Trusts §227.6 (1956)

43. Ibid.

D. Distributions.

The specific statutory prohibitions and liabilities dealing with distributions were discussed above. Where no statutory mandate applies, the prudent man standard is again applicable, and trustees who are charged with the responsibility of making distributions must make a reasonable investigation into the status of the organization or group to whom a distribution is contemplated. Distributions can only be made pursuant to the purposes of the corporation as stated in its articles, with the exception that where authorized in the articles reasonable compensation may be paid for services rendered.

If the same reasonable care and skill required as to investments are exercised in authorizing distributions, there is no basis for any personal liability on the part of the trustees authorizing the distributions.

E. Contracts.

As stated above in the section concerned with the specific statutory prohibitions and liabilities, there is no question but that trustees are not personally liable "for any obligation of the corporation."⁴⁴ Thus, as long as a contract is authorized and executed by the trustees for the corporation as a unit and not as individuals, no personal liability on the part of the trustees will arise - - the corporation alone is liable on the contract. But, where a contract is made by a member or members of

44. §1702.55 (A).

the board of trustees acting in his or their separate capacity, and not collectively at a board meeting regularly called, he or they may be subject to personal liability on the obligation.⁴⁵ Normally, liability arises only where the individual trustee or trustees purport to bind themselves as individuals.⁴⁶ However, in order to protect themselves, trustees when making a contract should in unmistakable terms make certain that all parties understand that it is the contract of the corporation and not of the individual trustees.

Lastly, there is no question but that trustees are liable on contracts which they had no authority to make.

F. Tortious Injury to Third Persons

A tort is a negligent or intentional wrong or wrongful act which causes injury to another. Such a wrongful injury, which may be to another's person or property, subjects the person committing the wrong to personal liability for the damages proximately resulting from the injury.

Trustees, like all other persons, are individually liable for the results of their wrongful acts or torts, and the mere fact that a tort was committed by a trustee during the performance of his corporate duties will not operate to relieve the

45. See Aungst v. Creque, 72 Ohio St. 551, 74 N.E. 1073 (1905); Ohio National Bank v. Cook, 38 Ohio St. 442 (1882). See also generally, 13 Am. Jur., Corporations §1049 (1938).

46. Ibid.

47
trustee from liability.

The constitution of an intentional tort is obvious to all and needs no further explanation, but the elements of the much more common negligent tort are not so apparent. Generally, however, negligence arises when a person fails to exercise the ordinary care normally exercised by a reasonable and prudent man. 48

Two examples may serve to point up the types of tort situations which might arise because of a trustee's official relationship with a charitable corporation.

Where the charitable corporation owns property such as land, apartment buildings, hotels, office buildings and the like, certain duties on the part of the trustees arise. The trustees, for example, would have the duty to use ordinary care in providing for the management of the property. And, if the trustees authorized the hiring of a manager or employee who the trustees knew or should have known was incompetent, then the trustees would be guilty of negligence and would be personally liable for damages proximately caused to third persons by the incompetence of the manager or employee.

Similarly, where a dangerous condition exists with respect to property owned by the corporation and such dangerous condition causes injury to a third person, the trustees would be

47. See 10 Fletcher, Corporations § 4938 (Rev. ed. 1961).

48. See generally, Prosser, Torts § 31 (2d ed. 1955).

personally liable for the damages if, and only if, they knew or should have known of the dangerous condition and did nothing to remedy the condition. In this situation, as in others, the "should have known" standard is met if a reasonable man in the same or similar circumstances would have been aware of the condition.⁴⁹

It should be emphasized that the liability of the trustees in the above situations and in all tort situations is based on the trustees' own negligence or breach of duty, and in no event does a trustee or other officer of a corporation incur liability for a tort of the corporation or its agents merely by reason of his official relation to the corporation.

G. "Self-Dealing"

In the normal trust situation, transactions by a trustee which involve both the trust property and property he as an individual owns, often termed "self-dealing," are improper and render the trustee liable for any resulting loss to the trust and for any profit personally made by him.⁵⁰ However, directors of a business corporation may legitimately carry on such dealings with their corporation if certain requirements as to fairness are met.⁵¹ It is not clear which rule will be applied to the trustees of a

49. Ibid.

50. See Haggerty v. Squire, 137 Ohio St. 207, 28 N.E. 2d 554 (1940); Ulmer v. Fulton, 129 Ohio St. 323, 195 N.E. 557 (1935).

51. See generally, Ballantine, Corporations 170 - 75 (rev. ed. 1946); 12 Ohio Jur. 2d, Corporations § 503 (1955).

charitable corporation in Ohio, but a safe procedure is to apply to a court of equity for approval of a proposed transaction between a trustee and the corporation.

H. Indemnification.

It is important to note that the Ohio statute declares that a "corporation may indemnify a trustee or officer or a former trustee or officer . . . against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding to which he is made a party by reason of being or having been such trustee, director, or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty."⁵² Thus, it is clear that a trustee or officer may be indemnified for expenses in connection with lawsuits arising because of his official relation to the corporation where, in such a suit, he is not found to be liable for negligence or misconduct in the performance of his duty.

In light of this statutory provision which is permissive in nature, it would seem advisable for the usual charitable corporation to provide in the regulations for mandatory indemnification. A suggested provision is as follows:

Indemnification. The corporation shall indemnify a Trustee or Officer or former Trustee or Officer or any person who may have served at its

52. §1702.12 (E).

request as a Trustee, Director or Officer of another corporation (whether non-profit or for profit) of which it is a member, in which it owns shares, or of which it is a creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding to which he is made a party by reason of being or having been such Trustee, Director, or Officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty.

I. Enforcement.

Primarily, it is the duty of the trustees of a charitable corporation to enforce and preserve the purpose of the corporation, and any one trustee may maintain an action against the others to enforce that purpose or to compel the redress of a breach of duty. Also, the members of the corporation may institute action against the corporation, a trustee, an officer or another member.⁵³

In addition, the attorney general of the State of Ohio, as a representative of the public, which is in effect the beneficiary of the charity, has a primary obligation of enforcing proper use of corporate property,⁵⁴ and he is usually a necessary⁵⁵ party to any suit affecting the public interest in the charity.

53. See §1702.12(H).

54. See §1702.24.

55. §109.25

Also, there may be certain powers of "visitation" in a donor or his heirs or assigns, although Ohio's position is not clear in this respect. Basically, this power of visitation is the right of the donor, with the aid of the courts, to inquire⁵⁶ into and correct irregularities and abuses.

Lastly, where the alleged liability runs not to the corporation but to a third person, as in contract or in tort, the third person may maintain directly an action against the trustees.

Norman A. Sugarman

Joseph T. Gorman



56. See Noblitz v. Western Reserve University, 21 Ohio C.C.R. 144, 11 Ohio C.C. Dec. 515 (1901). See also, generally, 4 Scott, Trusts § 391 (1956); 9 Ohio Jur. 2d, Charities § 35 (1954).

November 19, 1963

My dear Mr. Kangesser:

I wish to acknowledge the receipt of your kind letter and your generous contribution to the Temple which you enclosed. I need not tell you that I am deeply appreciative of your thoughtfulness and your generosity. The Temple, I am sure, will make its own direct acknowledgment to you. Please be assured of my gratitude and my readiness at all times to be of service to you.

With warmest regards, I remain

Most cordially yours,

ABBA HILLEL SILVER

AHS:bfm

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