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The Attorney General's Duties Concerning Charitable Trusts:

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"Because of the public interest necessarily involved in a charitable trust or gift to charity and essential to its legal classification as a charity, it is generally recognized that the attorney general, in his capacity as representative of the state and of the public, is the, or at least a, proper party to institute and maintain proceedings for the enforcement of such a gift or trust. The powers, duties, and functions of the attorney general in these respects is provided for by statute in some states, but it has generally been held that even in the absence of statute he has the power to enforce charitable trusts as a common-law incident of his office, and there is also authority to the effect that he has this common-law power although he has also been given the same power by statute. It has generally been held that if the trustees improperly sell, lease, or otherwise dispose of the property or fund, misappropriate it, or put it to an improper or unauthorized use, the attorney general is the proper person to institute such proceedings as may be necessary to stop or redress the wrong. This, it has been said, is not only his right but his duty, and some decisions

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regard him as a necessary party to any such litigation. He can file an information either on his own initiative or on relation of any party concerned. Some authorities indicate, however, that the defendants in such proceedings have a right to object if the attorney general, or the state, will not be responsible for costs of the proceeding in the event it is not successful, and to insist upon joinder of someone who will be responsible for costs.

The attorney general is a necessary party where the issue is whether the assets of a charitable trust should be diverted to some other purpose and the trust dissolved. He is the proper party to seek removal of the trustees of a charitable trust for malfeasance or neglect to give bond, and a proper party defendant in a proceeding by the trustees of such a trust seeking directions as to the mode of executing the trust. In representing a public charitable trust, the attorney general is the attorney for the public, not for the trustee.

There is logic in the view that, the existence and functioning of a public charity being at stake, no binding adjudication or settlement can be reached adverse to the public interest unless the state is represented in the litigation. Where the public is represented by the attorney general in any such litigation, all persons except those having some special and immediate interest distinct from the

public are bound by the result. A disclaimer of interest by the attorney general, after being brought in as a party to the litigation, may have this result.

If not made a party to the original proceedings, the attorney general is entitled to come in by intervention, upon demonstrating that public interest is involved, or he may be brought in as a party by amendment, in either case being entitled to take control of the litigation to the extent that the public interest may require. But the factor of public interest in the litigation is essential to the attorney general's standing as a party and his right to take over. If the gift or trust fails to qualify as a public charity or gift to the public, that ends his right to participate. He is not a necessary party where the public interest is remote and the property is in the hands of trustees charged with its management whose management and good faith are not involved in the litigation.

Whether the attorney general can intervene, or is a necessary or proper party, in a contest of a will which makes provision for a charitable trust is discussed in a later article."

15 Am. Jur. 2d, Charities, § 119.

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§ 4-1. Common law declared to be in force.--All such parts of the common law as were heretofore in force and use within this State, or so much of the common law as is not destructive of, or repugnant to, or inconsistent with, the freedom and independence of this State and the form of government therein established, and which has not been otherwise provided for in whole or in part, not abrogated, repealed, or become obsolete, are hereby declared to be in full force within this State.

General Statutes of North Carolina

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