Review of Pennsylvania Legislation 1939 - Fiduciaries and Decedents' Estates Investments by Fiduciaries

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conviction thereof, shall be sentenced to pay a fine not in excess of $500.00, or to undergo imprisonment for not more than three years, or both, in the discretion of the court."

It is submitted that this act does not make such information privileged and therefore inadmissible in evidence. The obvious purpose of the Act is to prevent the voluntary divulging of such information, and giving such information in response to a subpoena would not violate the act.¹⁴

The Act of February 11, 1895,¹⁵ (since repealed and replaced by the Act of May 15, 1933,)¹⁶ made it a misdemeanor to divulge records of the Banking Department. In an opinion by the Attorney General,¹⁷ it was held that the Commissioner of Banking was bound to obey a subpoena and that divulging the records of the Department as a witness did not violate the Act.

FRED S. REESE*  

VI. FIDUCIARIES AND DECEDENTS' ESTATES  

a. Investments by Fiduciaries  

The Fiduciaries' Act of 1917¹ as respects the legal investments which a fiduciary, having funds in his hands available for investment, is authorized to make, was again amended at the 1939 session of the General Assembly.

The section dealing with investments for fiduciaries, known as 41 (a) of the Act of 1917² was elaborately amended in 1935³ to enumerate the various types of obligations which constituted legal investments for a fiduciary. These new provisions were set forth in a number of subsections to paragraph 1 of section 41 (a) of the Act of 1917. Subsection 7 of the amendatory act validated investments by fiduciaries in fractional undivided interests in any investment in which a fiduciary was authorized to invest trust funds. This subsection has been retouched by the 1939 amendment.⁴

The amendment continues the authorization to invest in fractional undivided interests in legal investments or a common trust fund of such investments. However, the new Act stipulates that such common trust fund may include a mortgage investment fund containing legal investments and other assets. Minute statutory provisions regulating the creation and maintenance of common trust

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¹¹⁴70 C. J. 433.  
¹¹⁵P. L. 12.  
¹¹⁶P. L. 565, § 302, 71 PURD. STATS. (Pa.) § 733.  
¹¹⁷13 Dauph. 151 (1910).

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²20 PURD. STATS. § 801.  
³Act of July 2, 1933, P. L. 545, 20 PURD. STATS. (Pa.) § 801.  
funds and mortgage investment funds have existed in Pennsylvania for several years. In addition to common trust funds and mortgage investment funds maintained by bank and trust companies or trust companies, the new statute makes it lawful for a fiduciary to invest in a common trust fund or mortgage investment fund being maintained by a national banking association in its trust department where such fund is being administered in accordance with the law of Pennsylvania pertaining to such funds. A more startling innovation is the permission granted to an individual fiduciary to invest his own money along with the funds of the estate of which he is fiduciary in such investments when he is acting as co-fiduciary with the person, trust company, bank and trust company or national banking association creating such fractional undivided interests, or where he is co-fiduciary with the trust company, bank and trust company or national banking association maintaining such common trust fund or mortgage investment fund. The Act dispenses with the necessity of a new appraisement of the assets in a mortgage investment fund when the moneys are invested in such a fund at the time of investment, provided an appraisement of the assets is made once every three years.

Subsection 14 to paragraph 1 of Section 41 (a) of the Fiduciaries' Act was added by amendment in 1937. This subsection declared it to be lawful for a fiduciary to invest moneys of the estate in interest-bearing deposits, including savings accounts, for a period not exceeding one year from the date of deposit in financial institutions located within the Commonwealth. The sum allowed to be so invested was limited to $500.00. This subsection was amended at the 1939 session so as to increase the amount which a fiduciary is permitted to invest in savings accounts and other forms of deposit upon which interest is paid to $1000.00. No further changes were made by the new legislation. The deposit must still be made in an institution other than the one which is fiduciary of the estate.

In the case of Maris's Estate a testamentary trust to pay the income to a specified person for life contained a proviso that "all stock dividends consisting of shares of stock of the corporation issuing them shall be considered as principal." Certain corporations in which the estate had an interest declared a stock dividend out of earnings subsequent to the testator's death without decreasing the intact value of the stock as of the date of the will took effect. The court was of the opinion that under the line of cases represented by Nirdlinger's Estate such stock dividends must be treated for the purpose of distribution as income and that the provision in the will directing that such dividends be added to corpus was invalid as it amounted to a direction to accumulate income in violation of the Act of 1853, which prohibits dispositions of property by deed or will in a way which

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8 501 Pa. 21, 151 Atl. 577 (1930).
requires the accumulation of income for a period in excess of the life of the grantor or testator and the term of twenty-one years from his death. The court pointed out that the rule that stock dividends under these circumstances were distributable as income was a "rule of property" and the testator could not abrogate a rule of property by a direction that the rule should not apply.

This so-called "rule of property" has now been altered by the Act of 1939.11 This statute provides that provisions in instruments creating trusts which require extra-ordinary dividends declared upon stock held in trust, whether they are to be paid in cash, stock or in stock rights in the issuing or another corporation to be treated in whole or in part either as income or principal shall be valid and enforceable. The statute also permits the instrument to contain a direction that profits realized from the sale of stock may be treated in whole or in part as principal or income. The Act of 1853 was expressly repealed to the extent that it was inconsistent with the new legislation.

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b. Personal Liability of a Fiduciary Signing in Fiduciary Capacity

Section 1 of the Act of June 24, 1939,1 provides that where an instrument contains, or a person adds to his signature thereto, words indicating that he contracts or signs in his fiduciary capacity and such words disclose the estate or trust for which he acts, he is not to be personally liable thereon unless it contains an express provision that he shall be personally liable. Lacking such an express provision for personal liability, an action may be brought against him only in his fiduciary capacity and execution may be had only against the fiduciary assets.

Section 2 provides that "instrument" as used in Section 1 shall include any instrument in writing of any kind. "Person" is given its usual broad meaning including corporations, etc. "Fiduciary" is defined as including executors and administrators, trustees, etc., and any person acting in a similar capacity.

Section 3 is a separability provision as to instruments, and the act is made effective as to instruments executed before enactment.

It is to be noted that the act applies only to written instruments, leaving oral contracts and engagements to be controlled by the common law. The act does not purport to provide for an exclusive method whereby personal liability may be avoided in the case of written instruments. The act provides that where three essentials are present, there shall not be personal liability. These three essentials are: Either the body of the instrument shall contain or the signature shall have

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