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PUBLIC CHARITIES NOT LIABLE FOR TORT IN PENNSYLVANIA

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Although there has been an astounding diversity of opinion in the many jurisdictions as to the liability of public charities for the torts of their servants and agents, the law in Pennsylvania is clear on this point. Such charities are not liable.[1]

In Pennsylvania there has been no distinction made between cases where the injured person is a beneficiary of the charity, an employe of the charity, or a total stranger to its activities. If the organization, corporation, or association is a public charity, no liability for tort attaches.

Not only laymen but many lawyers appear to have little knowledge of the rulings of our courts with respect to charities and their lack of liability. Many who sit on boards of organizations hear pleas for public liability insurance, these pleas being based upon the moral responsibility of the charity to pay for its servant's negligence and resulting damage. It is to be wondered as to how nimble an insurance company's claim agent will be in settling a substantial claim for injuries caused by such negligence.

In Pennsylvania the reasoning behind this rule is that such charities do not have property or funds which have not been contributed for the purpose of the charity, and that therefore it would be against all law and all equity to take these trust funds, so contributed for a special charitable purpose, to compensate injuries inflicted or occasioned by the negligence of agents or servants of the charity.[2]

This theory is called the "trust fund" theory. In some of the states recognizing the "trust fund" theory, the courts therein have regarded the immunity of a charity as not extending to liability insurance carried by it, since such insurance is not trust property.[3] There appear to be no recorded decisions, however, in Pennsylvania, except in the case of a school district, where it was held that even though the defendant protected itself by liability insurance, it did not waive its immunity.[4] Some companies now write public liability policies contracting with the charity to waive the defense of "public charity".

The problem confronts us as to just what is a public charity.

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1 Siidekum, Ad., v. Animal Rescue League, 353 Pa. 408, 45 A.2d 59 (1946).
2 Fire Insurance Patrol v. Boyd, 120 Pa. 624, 15 A. 553 (1888).
3 145 A.L.R. 1340.
4 Kesman, et al., v. Fallowfield Township School District, 345 Pa. 457, 29 A.2d 17 (1942).

In the leading case of *Fire Insurance Patrol v. Boyd, supra,* Mr. Justice Paxson looked with favor upon this definition: "A gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erection or maintaining public buildings or works, or otherwise lessening the burdens of the government". Editors of law dictionaries also use the above definition.

Justice Paxson disregarded this definition: "Whatever is given for the love of God, or for the love of your neighbor, in the catholic and universal sense; given from these motives, and to those ends, free from the stain or taint of every consideration that is personal, private or selfish".

In so disregarding, he rather pointedly said: "This is undoubtedly charity in its highest and noblest sense. The Recording Angel might well point to it with satisfaction; and it may be the test in the Great Hereafter, but were we to apply it to the transactions of this wicked world, I fear it would lead to serious embarrassment".

In *Cresson's Appeal,*[5] Justice Strong, in his opinion, said that charity has been defined to be a general public use and that the English courts had generally resorted to the preamble of the Act of Parliament, 43d Elizabeth, in order to ascertain what were charitable uses. He suggested that the principles of this statute were a part of our common law, but suggested that many other gifts have been recognized at common law as gifts to a charitable use.

In Pennsylvania there have been numerous decisions in which organizations were termed "public charities". Although some of these decisions arose because of our taxing laws which exempt "purely public charities" from the payment of taxes, it appears that any organization which can stand the test of Article IX, Section 1, of the Constitution of Pennsylvania, and its enabling tax acts, as interpreted by the Courts, will certainly be termed a "public charity" upon consideration of such charity's liability for torts. In *Donohugh's Appeal,*[6] a "purely public charity" was defined as applying not only to those institutions solely controlled and administered by the state itself, but also to those private institutions administered for purposes of purely public charity, and not for private gain. It has long been recognized that a religious use is a charitable use[7].

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[5] 30 Pa. 437 (1858).

[6] 86 Pa. 306 (1878).

[7] Board of Home Missions v. Philadelphia, 266 Pa. 405, 109 A. 644 (1920); Canovaro, et al., v. Brothers of the Order of Hermits of St. Augustine, 326 Pa. 76, 191 A. 140 (1937); Central Pennsylvania Bible Conference Society v. Union Co., 24 Dist. 392 (1915); Holda v. Purcell, et al., 51 D.&C. 518 (1944).

In *Betts v. Y.M.C.A. of Erie*,[8] it was held that a Y.M.C.A. was a charitable use, and was not liable for the torts of its servants, it being held that the public character of a charitable institution, to be within the rule, is determined by the generality of its object and operations, not by its control by the public.

It has been held, however, that when a charitable institution conducts a business enterprise not directly related to the purpose for which the charity was organized, the negligence of its servants and agents may impose liability on the charity.[9]

With the growth of fraternal organizations and beneficial associations, the practitioner may be asked as to whether or not these organizations meet the charitable use test. Our courts have held that an association for the purposes of mutual benevolence, amongst its members and their families, cannot be deemed charitable uses under the common law of Pennsylvania, or the statutes concerning charitable bequests.[10]

The beneficial society sometimes has a home for the admission of the indigent and aged, as do many churches. The courts have said that such homes are not public charities when only the members of the order are admitted.[11] The rule seems to be different, however, when other people, who do not belong to the order, or to the church in question are admitted. The fact that an admission charge is made seems to make no difference if funds derived are insufficient to run the home, and the deficit is made up by charitable contributions.[12]

Hospitals have been defined as being public charities in the highest and noblest sense of the word.[13] In *Gable v. Sisters of St. Francis*,[14] a paying patient was injured. The court ruled that the corporation was not liable for the torts of its servants, because the corporation had erected a hospital out of charitable bequests, maintained it from charitable donations and admitted every person to its care, irrespective of religious faith or ability to pay.

Fire companies are public charities, having been formed for general and public usefulness.[15]

Among the many other organizations held to be public charities have been Boy Scout organizations, and their camps;[16] libraries, whether public or private,

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8 83 Pa. Super. 545 (1924).
9 Winnemore v. Philadelphia, 18 Pa. Super. 625 (1901).
10 Babb v. Reed, et al., 5 Rawle 151 (1835); Swift's Executors v. The Beneficial Society of the Borough of Easton, 73 Pa. 362 (1873).
11 Channon's Estate, 266 Pa. 417, 109 A. 756 (1920).
12 Philadelphia v. Masonic Home, 106 Pa. 572 (1884).
13 Philadelphia, Appeal, v. Pennsylvania Hospital, 154 Pa. 9, 25 A. 1076 (1893).
14 227 Pa. 254, 75 A. 1087 (1910).
15 Bethlehem Boro v. Perseverance Fire Co., 81 Pa. 445 (1876); Humane Fire Company's App., 88 Pa. 389 (1879); Supra, note 2.
16 Charter Oak Council v. New Hartford, 121 Conn. 466, 185 A. 575 (1936).

when open to the public and not administered for gain;[17] a Y.W.C.A., and its summer camp.[18]

A county agricultural association conducting county fairs, however, has been ruled as not being immune from liability for its servants' negligent torts.[19]

In Pennsylvania it has been held that a school or college founded and maintained by charitable donations, and open to all without reference to race or creed, is a "purely public charity". *The Ogontz School Tax Exemption Case,*[20] however, should be read. It is the latest case on the subject.

With the expenditures of large sums of money by the Commonwealth for the education of its youth in those institutions solely controlled and administered by the State, some thought should be given as to just how long the courts will continue to follow the per curiam definition of the Supreme Court in *Donohugh's Appeal, supra,* which extended the word "purely" to private institutions whose purposes were purely public charity, and not for purposes of private gain.

Be that as it may there is no doubt that thousands of corporations and organizations existing in Pennsylvania today are not liable for the torts of their servants and agents. Don't forget, however, that the legislature could make these institutions liable.

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17 Supra, note 6.
18 Lancaster County v. Y.W.C.A., 92 Pa. Super. 514 (1927).
19 Lichty v. Carbon County Agr. Association, 31 F. Supp. 809 (1940).
20 In re Ogontz School, 361 Pa. 285, 65 A.2d 150 (1949).