

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 608

By: Smith of the Senate

and

Benson of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to trusts; amending 60 O.S. 1991, Sections 175.24, 175.25 and 176, as amended by Section 5, Chapter 371, O.S.L. 1992 (60 O.S. Supp. 1993, Section 176), which relate to private and public trusts; authorizing certain actions by certain trustee; clarifying references; increasing amount of trust income exempt from creditors of beneficiary and not alienable by the beneficiary; modifying reference to certain indebtedness; clarifying circumstances in which certain trust may create certain indebtedness; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 60 O.S. 1991, Section 175.24, is amended to read as follows:

Section 175.24 In the absence of contrary or limiting provisions in the trust agreement or a subsequent order or decree of a court of competent jurisdiction, the trustee of an express trust is authorized:

A. To exchange, reexchange, subdivide, develop, improve, dedicate to public use, make or vacate public plats, adjust boundaries, and/or partition real property, and to adjust differences in valuation by giving or receiving money or money's worth. Easements may be dedicated to public use without consideration if deemed by the trustee to be for the best interest of the trust.

B. To grant options and to sell real or personal property at public auction or at private sale for cash, or upon credit secured by lien upon the property sold or upon such property or a part thereof and/or other property.

C. To grant or take leases of real property and of all rights and privileges above or below the surface of real property for any term or terms, including exploration for and removal of oil, gas, and other minerals, with or without options of purchase, and with or without covenants as to erection of buildings or as to renewals thereof, though the term of the lease or renewals thereof, or of such options extend beyond the term of the trust.

D. To raze existing party walls or buildings and/or erect new party walls or buildings alone or jointly with owners of adjacent property. To make ordinary repairs and in addition thereto such extraordinary alterations in buildings or other structures which are necessary to make the property productive. To effect and keep in force, fire, rent, title, liability, casualty, or other insurance of any nature, in any form and in any amount.

E. To compromise, contest, arbitrate, or settle any and all claims of or against the trust estate or the trustee as such. To abandon property deemed by the trustee burdensome or valueless.

F. To pay calls, assessments, and any other sums chargeable or accruing against, or on account of shares of stock or other securities in the hands of the trustee where such payment may be legally enforceable against the trustee or any property of the trust, or the trustee deems payment expedient and for the best interest of the trust. To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts; to assent to corporate sales, leases, and encumbrances, and in general, except as limited by the particular trust agreement, have and exercise all powers of an absolute owner in respect of such securities. In the exercise of the foregoing powers the trustee shall be authorized, where he deems such course expedient, to deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of

persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve. Any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights shall be free, unless the trust agreement provides otherwise, from any restrictions on sale or otherwise contained in the trust agreement relative to the securities originally held.

G. Whenever the trust agreement directs, authorizes, requires or permits investment of the trust estate in obligations issued or guaranteed by the United States, or any instrumentality or agency thereof, the trustee may make such investment directly or in the form of securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C.A. Section 80a-1 et seq.; provided, that the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such United States Government obligations, and provided further, that any such investment company or investment trust shall take delivery of such collateral, either directly or through an authorized custodian.

H. Generally To borrow money or create an indebtedness or obligation including any bond indebtedness or obligation, except as limited by the provisions of Section 175.1 et seq. of this title; and generally to execute any deed or other instrument and to do all things in relation to such trust necessary or desirable for carrying out any of the above powers or incident to the purposes of such trust.

I. Employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust estate; permit real estate held in trust to be occupied by a surviving spouse or minor child of the trustor and, where reasonably necessary for the maintenance of the surviving wife or minor child, invest trust funds in real property to be used for a home by such beneficiary; make any contracts pertaining to oil, gas, or

Req. No. 2628Page 3

other natural resources as are customary in the community where the real property held in trust is situated; in the trustee's discretion pay funeral expenses of any beneficiary actually receiving benefits from the trust estate at the time of his or her death.

J. The following rules of administration shall be applicable to all express trusts but such rules shall not be exclusive of those otherwise imposed by law unless contrary to these rules:

1. Where a trustee is authorized to sell or dispose of land, such authority shall include the right to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way, or undivided interests therein;

2. Where a trustee is authorized by the trust agreement creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, he shall have and shall be deemed always to have had power to raise the money required by selling, converting, calling in, or mortgaging or otherwise encumbering all or any part of the trust property for the time being in possession;

3. A trustee shall have a lien and may reimburse himself with interest for, or pay or discharge out of the trust property, either principal or income or both, all advances made for the benefit or protection of the trust or its property and all expenses, losses, and liabilities, not resulting from the negligence of the trustee, incurred in or about the execution or protection of the trust or because of his holding or ownership of any property subject thereto; and

4. When the happening of any event, including marriage, divorce, attainment of a certain age, performance of educational requirements, death, or any other event, affects distribution of income or principal of trust estates, the trustees shall not be liable for mistakes of fact prior to the actual knowledge or written notice of such fact.

K. The powers, duties, and responsibilities stated in ~~this act~~ Section 175.1 et seq. of this title shall not be deemed to

exclude other implied powers, duties, or responsibilities not inconsistent herewith.

L. Pay all taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing agencies.

M. No trustee shall be required to give bond unless the instrument creating the trust, or a court of competent jurisdiction in its discretion upon the application of an interested party requires a bond to be given.

SECTION 2. AMENDATORY 60 O.S. 1991, Section 175.25, is amended to read as follows:

Section 175.25 A. Any instrument creating a trust may provide by specific words that the interest of any beneficiary in the income of the trust shall not be subject to voluntary or involuntary alienation by such beneficiary. Subject to the following provisions of this section, a direction to this effect shall be valid and enforceable.

~~A.~~ B. Notwithstanding a provision in the terms of a trust restraining the alienation of the interest of a beneficiary, such interest shall be entitled to be reached in the satisfaction of claims to the following extent:

1. All income due or to accrue in the future to the beneficiary shall be subject to enforceable claims under the laws of this state for:

- ~~(a)~~ a. support of a husband, wife, or child of the beneficiary,
- ~~(b)~~ b. necessary services rendered or necessary supplies furnished to the beneficiary, or
- ~~(c)~~ c. a judgment based on any such claim under subparagraph (a) a or (b) b; and

2. In all cases not mentioned in ~~preceding~~ paragraph 1 of this subsection 1 herein, all income due or to accrue in the future to the beneficiary in excess of ~~Five Thousand Dollars (\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) per ~~annum~~ based upon calendar year ~~of the trust,~~ shall be subject to

garnishment by creditors of the beneficiary and shall be fully alienable by the beneficiary.

~~B.~~ C. Where two or more creditors undertake to reach the interest of any beneficiary of a trust, pursuant to the provisions of this section, they shall be subject to priority of payment in the order of the service of a notice of garnishment on the trustee. The pendency of any attachment or garnishment shall not prevent the filing of a further attachment or garnishment by the same or any other creditor.

~~C.~~ D. Where the beneficiary of any spendthrift trust is also the beneficiary under any other spendthrift trust created or administered either within or without this state, the aggregate income payable under all such trusts to the beneficiary shall be considered together for the purpose of determining the rights of creditors and assignees under this section.

~~D.~~ E. The right of any beneficiary of a trust to receive the principal of the trust or any part of it, presently or in the future, shall not be alienable and shall not be subject to the claims of his creditors.

~~E.~~ F. Where the interest of the beneficiary of a trust is subject to the exercise of discretion by the trustee or by another, the provisions of this act as to the rights of creditors and assignees shall apply with respect to any sums which the trustee or such other person determines shall be paid to or for the beneficiary.

~~F.~~ G. A trust in which the interest of the beneficiary is subject to restraints on alienation as provided in this act may be called a "spendthrift trust" and a direction in any instrument creating a trust that the interest of any beneficiary shall be held on or subject to a spendthrift trust shall be sufficient to restrain the alienation of such interest to the extent provided in this act.

~~G.~~ H. Nothing in this act shall authorize a person to create a spendthrift trust or other inalienable interest for his own benefit. The interest of the trustor as a beneficiary of any trust

shall be freely alienable and subject to the claims of his creditors.

~~H.~~ I. The provisions of this section may be enforced only by an action in a court of competent jurisdiction and the obligor beneficiary shall be a party defendant in such action. The trustee shall not be required to recognize any of the obligations provided for in this section or to withhold any income from the beneficiary until said trustee has been served with summons or garnishment summons. Such action shall be governed by the rules of civil procedure under the laws of ~~Oklahoma~~ this state.

SECTION 3. AMENDATORY 60 O.S. 1991, Section 176, as amended by Section 5, Chapter 371, O.S.L. 1992 (60 O.S. Supp. 1993, Section 176), is amended to read as follows:

Section 176. (a) Express trusts may be created to issue obligations and to provide funds for the furtherance and accomplishment of any authorized and proper public function or purpose of the state or of any county or municipality or any combinations thereof, in real or personal property, or either or both, or in any estate or interest in either or both, with the state, or any county or municipality or any combinations thereof, as the beneficiary thereof by the: (1) express approval of the Legislature and the Governor if the State of Oklahoma is the beneficiary; (2) express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a county is a beneficiary; (3) express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a municipality is a beneficiary. Provided, that no funds of said beneficiary derived from sources other than the trust property, or the operation thereof, shall be charged with or expended for the execution of said trust, except by express action of the legislative authority of the beneficiary prior to the charging or expending of the funds. The officers or any other governmental agencies or authorities having the custody, management or control of any property, real or personal or both, of the beneficiary of such trust, or of such a proposed trust, which property shall be needful for the execution of the trust purposes, are authorized

and empowered to lease such property for said purposes, after the acceptance of the beneficial interest therein by the beneficiary as hereinafter provided.

(b) A municipality may convey title to real property which is used for an airport to the trustees of an industrial development authority trust whose beneficiary is the municipality. Said industrial development authority trust must already have the custody, management or control of such real property. Such conveyance must be approved by a majority of the governing body of the municipality. A conveyance pursuant to this section may be made only for the sole purpose of allowing such authority to sell the property for fair market value when the property is to be used for industrial development purposes. Conveyances made pursuant to this subsection shall be made subject to any existing reversionary interest or other restrictions burdening the property and subject to any reversionary interest or other restriction considered prudent by the municipality.

(c) The trustees of a public trust having the State of Oklahoma as beneficiary shall make and adopt bylaws for the due and orderly administration and regulation of the affairs of the public trust. All bylaws of a public trust having the State of Oklahoma as beneficiary shall be submitted in writing to the Governor of the State of Oklahoma. The Governor must approve the proposed bylaws before they take effect.

(d) No public trust in which the State of Oklahoma is the beneficiary may be amended without a two-thirds (2/3) vote of approval of the trustees of such trust. Provided, that any such amendment is subject to the approval of the Governor of the State of Oklahoma. Such amendments shall be sent to the Governor within fifteen (15) days of their adoption.

(e) No trust in which a county or municipality is the beneficiary shall hereafter create an indebtedness or obligation, including any bond indebtedness, until such indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of ~~said~~ the beneficiary, if the indebtedness or obligation is in excess of five percent (5%) of the greater of (i)

the then existing total indebtedness of the trust, or (ii) the value of all assets of the trust. In the event a trust has more than one beneficiary, as authorized by this section, such trust shall not incur an indebtedness or obligation, including any bond indebtedness, until such indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of two-thirds (2/3) of the beneficiaries of ~~said~~ the trust, if the indebtedness or obligation is in excess of five percent (5%) of the greater of (i) the then existing total indebtedness of the trust, or (ii) the value of all assets of the trust.

(f) All bonds described in subsection (e) of this section, after the effective date of this act, except bonds sold to the federal government or any agency thereof or to any agency of the State of Oklahoma, shall be awarded to the lowest and best bidder based upon open competitive public offering, advertised at least once a week for two (2) successive weeks in a newspaper of general circulation in the county where the principal office of the trust is located prior to the date on which bids are received and opened, except, on bond issues with the approval of three-fourths (3/4) of the trustees, and a three-fourths (3/4) vote of the governing body of the beneficiary, or three-fourths (3/4) vote of the governing bodies of each of the beneficiaries of said trust as the case may be, competitive bidding may be waived. No bonds shall be sold for less than par value, except upon approval of three-fourths (3/4) of the trustees. In no event shall bonds be sold for less than sixty-five percent (65%) of par value. Provided, however, in no event shall the original purchaser from the issuer of any bonds issued by any public trust for any purpose receive directly or indirectly any fees, compensation or other remuneration in excess of four percent (4%) of the price paid for such bonds by the purchaser of such bonds from the original purchaser; and further provided, that the average coupon rate thereon shall in no event exceed fourteen percent (14%) per annum. No public trust shall sell bonds for less than ninety-six percent (96%) of par value until the public trust has received from the underwriter or financial advisor or, in the absence of an

underwriter or financial advisor, the initial purchaser of such bonds, an estimated alternative financing structure or structures showing the estimated total interest and principal cost of each alternative. At least one alternative financing structure shall include bonds sold to the public at par. Such estimates shall be considered a public record of said public trust. Bonds, notes or other evidences of indebtedness issued by any public trust shall be eligible for purchase by any state banking association or corporation subject to such limitations as to investment quality as may be imposed by regulations, rules or rulings of the State Banking Commissioner.

(g) Public trusts created pursuant to this section shall file annually, with their respective beneficiaries, copies of financial documents and reports sufficient to demonstrate the fiscal activity of such trust, including, but not limited to, budgets, financial reports, bond indentures and audits. Amendments to the adopted budget shall be approved by the trustees of the public trust and recorded as such in the official minutes of such trust.

(h) Contracts for construction, labor, equipment, material or repairs in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid, which shall be published in the manner provided in the preceding section hereof; such advertisements shall appear in the county where the work, or the major part of it, is to be done, or the equipment or materials are to be delivered, or the services are to be rendered. Provided, however, should the trustee or the trustees find that an immediate emergency exists, which findings shall be entered in the journal of the trust proceedings, by reason of which an immediate outlay of trust funds in an amount exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then such contracts may be made and entered into without public notice or competitive bids; provided that the provisions of this subsection shall not apply to contracts of industrial and cultural trusts.

(i) Any public trust created pursuant to the provisions of this section shall have the power to acquire lands by use of eminent domain in the same manner and according to the procedures provided for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes. Any exercise of the power of eminent domain by a public trust pursuant to the provisions of this section shall be limited to the furtherance of public purpose projects involving revenue-producing utility projects of which the public trust retains ownership; provided, for public trusts in which the State of Oklahoma is the beneficiary the exercise of the power of eminent domain may also be used for public purpose projects involving air transportation. Revenue-producing utility projects shall be limited to projects for the transportation, delivery, treatment or furnishing of water for domestic purposes or for power, including, but not limited to the construction of lakes, pipelines and water treatment plants. Any public trust formed pursuant to this section which has a county as its beneficiary shall have the power to acquire, by use of eminent domain, any lands located either inside such county, or contiguous to such county pursuant to the limitations imposed pursuant to this section.

(j) Provisions of this section shall not apply to entities created under Sections 1324.1 through 1324.26 of Title 82 of the Oklahoma Statutes.

SECTION 4. This act shall become effective September 1, 1994.

44-2-2628

KS