

STATE OF OKLAHOMA

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

By: Smith of the Senate

and

Benson of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to trusts; amending 60 O.S. 1991, Sections 175.24 and 175.25, 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; stating circumstances in which certain trust may create certain indebtedness; providing for codification; 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 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 178.13 of Title 60, unless there is created a duplication in numbering, reads as follows:

Any indebtedness issued by a public trust having as its principal purpose, and which is primarily engaged in, the ownership and operation of a hospital or related institution, as defined in Section 1-701 of Title 63 of the Oklahoma Statutes, and the beneficiary of which is a county or municipality shall not be subject to the beneficiary approval requirements of Section 176 of Title 60 of the Oklahoma Statutes, if the indebtedness does not exceed five percent (5%) of the greater of:

1. The then existing total indebtedness of such trust; or
2. The value of all assets of such trust.

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

44-2-2719

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