

TRANSMITTAL OF RULES ADOPTED

FROM: ATTORNEY GENERAL'S OFFICE
(Name of Agency)

TO: CODE REVISER
LEGISLATIVE BLDG (Southwest Corner, Ground Floor)
Olympia 98501

The enclosed Permanent rules , being order No. 101
Emergency rules

relating to (Name of rules or description of subject matter)

Regulations for the administration of charitable trusts and similar relationships under chapter 53, Laws of 1967, Ex. Sess.

(ALTERNATIVE A. Use only for adoption of permanent rules)

pursuant to Notice No. 1003 ^① filed with the code reviser on Oct. 31, 1967 ^② were regularly adopted as permanent rules of this agency at Olympia, Washington on Dec. 8, 1967 and are herewith filed in the office of the code reviser pursuant to chapter 34.04 RCW. The effective date of such rules shall be Jan. 8, 1968. ^③

(ALTERNATIVE B. Use only for adoption of emergency rules)

pursuant to its finding that the immediate adoption of these rules is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to the public interest, were regularly adopted as emergency rules of this agency at _____ on _____ and are herewith filed in _____ (place) _____ (date) the office of the code reviser pursuant to chapter 34.04 RCW.

Dated this _____ 8th _____ day of December 1967.

STATE OF WASHINGTON
FILED
DEC 8 1967
CODE REVISER'S OFFICE
DOCKET # 1894 FILE # 1

ATTORNEY GENERAL'S OFFICE
(AGENCY)
Robert F. Hauth
By ROBERT F. HAUTH

Title Assistant Attorney General

- ① NOTICE NUMBER AS APPEARS ON THE COPY OF NOTICE RETURNED TO YOU BY REVISER'S OFFICE
- ② STAMPED DATE AS APPEARS ON THE COPY OF NOTICE RETURNED TO YOU BY REVISER'S OFFICE
- ③ UNLESS A LATER DATE IS SPECIFIED IN THIS ORDER OR IS PRESCRIBED IN ANOTHER STATUTE, RULES ARE EFFECTIVE 30 DAYS AFTER FILING: RCW 34.04.040. LEAVE THIS SPACE BLANK EXCEPT IN SUCH SPECIAL CASES.

CHAPTER 44-01

REGULATIONS FOR THE ADMINISTRATION
OF CHARITABLE TRUSTS IN THE STATE OF WASHINGTON

STATE OF WASHINGTON
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WAC 44-01-010 PROMULGATION. Under the provisions of chapter 53, Laws of 1967, Ex. Sess., hereinafter designated as the Washington charitable trust act or charitable trust act, the attorney general of the state of Washington hereby promulgates the following regulations to provide for the creation of the division of charitable trusts in the office of the attorney general of the state of Washington, to provide a register for the registration of all charitable trusts and trustees subject to said charitable trust act, and to provide for the administration of that act.

WAC 44-01-020 GENERAL DUTIES OF THE ATTORNEY GENERAL AND OF CHARITABLE TRUSTEES. It is the duty of the attorney general to enforce the provisions of all charitable trusts in this state and to enforce the proper application of funds held in trust in this state for public charitable purposes. Except as otherwise provided in chapter 53, Laws of 1967, Ex. Sess., the trustees of all charitable trusts and similar relationships, as defined in that chapter and these regulations, are required to report the existence of their trust or other relationship and to report its administration on an annual or other basis thereafter, at the times and in the manner prescribed by said act and by these regulations.

WAC 44-01-030 CREATION OF CHARITABLE TRUST DIVISION - REGISTER OF TRUSTEES. There is established in the office of the attorney general of the state of Washington, a division of charitable trusts. The division of charitable trusts shall establish and maintain in the office of the attorney general, charitable trust division, Olympia, Washington, a register of charitable trusts which shall contain a listing of all trustees subject to the provisions of the Washington charitable trust act, and of the particular trust, foundation, or other relationship under which they hold property for charitable purposes.

WAC 44-01-040 TO WHOM RULES APPLY. Any trustee, as defined in section 2 of the charitable trust act and by these regulations, not otherwise expressly exempted in whole or in part by sections 2 or 3 of the charitable trust act, holding money or property of any kind whatsoever, is subject to and must comply with the charitable trust act and with these regulations.

WAC 44-01-050 DEFINITIONS. The term "charitable trust" in the charitable trust act and in these regulations unless otherwise limited is deemed to mean any relationship whereby real or personal property is held for a charitable purpose or purposes. It includes but is not limited to express trusts created by will or by deed, and charitable foundations, whether incorporated or unincorporated. The term "trustee" unless otherwise limited includes any legal entity, irrespective of its character, which holds a vested legal title to and control over real or personal property for any charitable purpose under the terms or provisions of a charitable trust. The term "trustee" excludes any persons or legal entities who are mere titleholders or custodians or depositaries of property which is held for charitable purposes, and who have no powers or duties relative to the administration of such property, except as otherwise provided in these regulations. The term "charitable trust act" means the Washington charitable trust act, chapter 53, Laws of 1967, Ex. Sess.

WAC 44-01-060 EXEMPTIONS AND EXCLUSIONS. The charitable trust act does not apply to the following entities, each of which is exempt from the act:

(1) Governmental bodies. The United States, any state, territory or possession of the United States, the District of Columbia, Puerto Rico, or any of their agencies or governmental subdivisions;

(2) Religious bodies:

(a) Incorporated, bona fide tax-exempt religious organizations;

(b) Charitable agencies and organizations affiliated with and forming an integral part of said religious body, or operated, supervised or controlled directly by such religious body;

(c) Any officer of any such religious body holding property for religious purposes.

If such organization is not at the time it receives property declared to be tax-exempt, it is exempt from the charitable trust act for two years or until it receives from the federal government a declaration of its tax-exempt status, whichever occurs first.

(3) Schools. Educational institutions, of a nonprofit and charitable nature, having a course of studies equivalent to that of a public school or college operated by the state of Washington or a school district of the state of Washington.

(4) Hospitals. Nonprofit charitable hospitals, except hospitals formed as trustees under the terms of a charitable trust. A hospital is not exempt if it was organized or re-organized to operate by virtue of an endowment or as a result of one or more charitable contributions, or to administer a charitable trust.

(5) Banking organizations. A bank or trust company subject to examination by the state supervisor of banking, the United States comptroller of the currency or the board of governors of the federal reserve system. This exemption is applicable if the bank or trust company administers funds as a trustee, as an executor or a court-appointed fiduciary. However, a trust is not exempt from the operation of the charitable trust act merely by reason of the fact that one or more banks may be co-trustees with other persons or entities in the administration of such trust.

(6) Community foundations, when such foundations:

(a) Are tax-exempt;

(b) Are administered, in part, to foster continuity of support for local charities in accordance with changing community needs, and by reason of such flexibility reduce the necessity of application of the cy pres doctrine;

(c) Have a governing body consisting of ten persons or more, who are representatives of public agencies or are truly representative of the general public;

(d) Have assets exceeding \$2,000,000 in value;

(e) Publish an annual report and furnish a copy of it to the attorney general covering the source and use of their funds, and other information representative of their operations.

A community foundation otherwise exempt under this act is not exempt in any year in which a copy of such report is not forwarded to the attorney general for examination within a reasonable time following the close of the calendar or other fiscal year of such foundation. Any time not greater than six calendar months after the close of a fiscal year shall be considered reasonable, and any greater lapse of time, unless sufficiently explained or excused, shall be considered prima facie unreasonable.

WAC 44-01-070 QUALIFIED EXEMPTION - INCORPORATED NONPROFIT FOUNDATIONS. A nonprofit foundation incorporated for charitable purposes, contributions to which are currently allowed as charitable deductions under the United States income tax laws, is exempt from the notice and annual filing provisions of the charitable trust act on the following conditions:

(1) There is on file in the office of the attorney general a copy of the declaration of the tax-exempt status of such foundation; and

(2) The foundation has filed with the attorney general a copy of its United States tax return of an exempt corporation for such year, filed within a reasonable time after the close of its calendar or other fiscal year. Anytime not greater than six calendar months after the close of a fiscal year shall be considered reasonable, and any greater lapse of time, unless sufficiently explained or excused, shall be considered prima facie unreasonable.

The qualified exemption of such foundations under section 3 of the charitable trust act from notice and filing requirements shall not be deemed to be a declaration of exemption of such foundations from compliance with other sections of the act requiring the furnishing of necessary information from time to time upon reasonable request from the attorney general, and shall not be deemed to exempt such foundations from the provisions of sections 10 and 11 of the charitable trust act.

WAC 44-01-080 REGISTRATION - TIME FOR REGISTRATION. Every trustee subject to the charitable trust act shall register with the attorney general within two months after receiving property for charitable purposes. Registration shall consist of the filing of a registration statement, to which shall be attached a copy of the trust instrument, and containing the following information:

(1) Name and address of the charitable trust, foundation, or corporation or trustee subject to the act;

(2) Type of instrument creating or governing the organization, corporation, or trustee, date of instrument, and the location where it is filed;

(3) Names and addresses of trustees, or corporate officers and directors;

(4) Titles of instruments attached to the registration report;

(5) Description and value of charitable corporation or trust assets and liabilities, identifying whether computed at book or market value;

(6) Purpose of the charitable corporation or trust;

(7) Names and addresses of beneficiaries designated by the instrument governing the charitable corporation or trust; and

(8) Designation of the fiscal year of the trust or corporation, if reports are to be filed on other than a calendar year basis.

Trustees of charitable trusts, as defined in the charitable trust act and these regulations, holding or being in control of property for charitable purposes July 30, 1967, shall file the required registration statement on or before January 31, 1968.

WAC 44-01-090 ANNUAL REPORTS. Every trust or trustee, as defined by the Washington charitable trust act and these regulations, shall file an annual report under oath, in the office of

the attorney general, division of charitable trust, Olympia, Washington.

WAC 44-01-100 ANNUAL REPORTS - SUBSTANCE - FORM. The annual reports shall contain the information required by the United States Internal Revenue Service in its form 990-A, Part II, return; and such further information as may be required by these regulations as amended from time to time. Such report insofar as it contains the required information, may be submitted in the form of either:

(1) The form 990-A, Part II, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX, filed with the U. S. Internal Revenue Service; or

(2) A copy of the annual account filed by the trustee in any court having jurisdiction of the trust; or

(3) A copy of an audit certified as being true and correct and in accordance with generally accepted accounting principles by any certified public accountant and containing substantially the information required as an annual report by the attorney general.

If any such alternative form is utilized and does not contain substantially all the information required by these rules, the form shall have attached to it one or more supplementary sheets providing such information.

WAC 44-01-110 ANNUAL OR PERIODIC REPORTS - TIME FOR FILING.

The first annual report shall cover the first calendar or other fiscal year of the trust ending after the trust becomes subject to the act, whether or not such report covers a full twelve-month period. The report shall be filed on or before the expiration of four months after the close of said first calendar or other fiscal year.

Every trustee of a charitable trust subject to the reporting provisions of the charitable trust act shall, subsequent to the filing of the first annual report, file an annual report for each subsequent year during the existence of the trust except as herein provided. All such subsequent annual reports shall cover the twelve-month period ending with the calendar or other fiscal year of the trust, and they shall be due on or before the expiration of four months after the close of such calendar or other fiscal year. A trust or other organization which commences reporting on either a calendar or fiscal year basis shall continue such method of reporting unless the attorney general permits a different method of reporting as provided in these regulations.

If any part of the income or principal of the charitable trust or corporation previously established was authorized or required to be applied to a charitable purpose on or before July 30, 1967, the first annual report shall be filed on or before January 31, 1968, unless filing of such report is suspended for any reason under the provisions of section 7, chapter 53, Laws of 1967, Ex. Sess.

The attorney general may suspend the filing of reports as to a particular trust for a reasonable, specifically designated time upon written application of the trustee filed with the attorney general, and after the attorney general has filed in the register of charitable trustees a written statement that the interests of the beneficiaries will not be prejudiced thereby and periodic reports are not required for proper supervision by his office.

WAC 44-01-120 REGISTRATION AND REPORTS - EXECUTING AND FILING. All registration and annual reports and other reports required by the charitable trust act, or by these regulations, shall be executed on affidavit by one or more trustees of the charitable trust, or by the chairman or secretary of the board submitting them. All such registration and annual reports and other reports and information shall be submitted to the attorney general, charitable trust division, temple of justice, Olympia, Washington, unless otherwise directed by the attorney general.

WAC 44-01-130 NOTICE OF APPLICATION FOR TAX EXEMPTION. The trustee of a charitable trust shall file with the attorney general a copy of any application for federal income tax exemption and also a copy of any application for exemption from real or personal property tax exemptions in the state of Washington.

WAC 44-01-140 NOTIFICATION OF LITIGATION. As provided in section 12, chapter 53, Laws of 1967, Ex. Sess., the charitable trust act, the attorney general shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. Notification shall be given by the trustee or the attorney for the trustee in the manner provided by the charitable trust act. Cases of which the attorney general shall be notified shall include, but are not necessarily limited to, the following:

- (1) An action to dissolve a charitable trust or trustee;
- (2) An action alleging mismanagement or breach of trust on the part of a trustee;
- (3) An action by trustees or others requesting directions from the court as to management of the trust;
- (4) Any action involving an application or request for application of the doctrine of cy pres;
- (5) An action to approve the disposition of assets wherein, if the trust were a private trust, one or more beneficiaries of such trust would have the right to be represented and to be heard.

WAC 44-01-150 DUTY TO FURNISH INFORMATION - IN GENERAL. The trustees of all trusts subject to the charitable trust act, and all other persons to whom the provisions of the act apply, shall furnish such further information and copies of records or other documents as and in the manner required from time to time by the attorney general in order to establish, maintain and keep current his register of trustees as provided by law, or for any other lawful purpose contemplated by the charitable trust act. A request for information shall be in writing, signed by the attorney general or his representative, specifying as precisely as practicable the nature of the information desired and the nature of the instruments, reports, records, or other documents copies of which are requested for that purpose. Every person to whom such written request is directed, having such information or documents, shall comply with said written request within thirty days after its receipt, unless the time is extended in writing.

The procedures specified in this regulation for the gathering of information are intended to supplement and not limit the powers of the attorney general expressly granted in sections 10, 11 and 12, chapter 53, Laws of 1967, Ex. Sess., or any other law.

WAC 44-01-160 REGISTER - INSPECTION. The attorney general will maintain the register of trustees in book or other suitable form, in which each trust or other relationship subject to the Washington charitable trust act shall be recorded, together with all information pertinent thereto which the attorney general deems necessary in the public interest.

The register and records of any charitable trust registered in the office of attorney general are matters of public record and shall be subject to reasonable inspection between the hours of 9:00 a.m. and 4:00 p.m. on any day on which the attorney general's office is open for business.

When any trust instrument contains a trust for mixed purposes, and any one or more of such purposes is a private charity rather than a public charity, such document shall be withheld from public inspection.

WAC 44-01-170 WHEN TRUST BECOMES SUBJECT TO ACT - VESTED REMAINDERS. Annual reports must be filed commencing not later than one year after trust income or principal is authorized or required to be used for a charitable purpose. When a trust consists of a vested charitable remainder preceded by a life estate, a registration statement and a copy of the written instrument shall be filed by the trustee, if there is an expressly designated trustee, or by the life tenant, within two months after commencement of the life estate. The written instrument filed in those situations where there is a vested charitable remainder will, upon written request, be marked and held confidentially and will not be open for public inspection until such time as the charitable remainder vests in possession.

WAC 44-01-180 REGULATIONS - AMENDMENTS. These regulations may be amended at any time and from time to time by the attorney general.