

U.S. TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Washington, D.C., December 6, 1967.

HON. WRIGHT PATMAN,
Chairman, Subcommittee, Foundation Study,
Select Committee on Small Business,
Washington, D.C.

DEAR MR. CHAIRMAN: During my appearance before your Subcommittee on November 16, 1967, you inquired as to the extent to which the 50 states and the District of Columbia have set up registration and reporting requirements that are applicable to various kinds of charitable organizations.

As you will recall, I stated that all nonprofit entities being operated in the form of a corporation appeared to have a common registration requirement. My basic premise in this regard was that a filing of the original corporate charter or articles of incorporation with some public official has been universally made a condition to the initial creation of all kinds of corporations. Our survey confirms this situation which is, of course, a matter of considerable importance in the present connection in view of the fact that an incorporated organization is far more common than an unincorporated one in the private foundation field.

Our survey also discloses that there are only 11 jurisdictions which presently have any broad statutory programs in force which require the trustees of an unincorporated trust for charitable purposes to file a registration statement and periodic accountings with the state attorney general's office. As a general proposition, the statutes in this first principal group of 11 jurisdictions (California, Illinois, Massachusetts, Michigan, New Hampshire, New York, Ohio, Oregon, Rhode Island, South Carolina, and Washington) tend to follow the provisions of the Uniform Supervision of Trustees for Charitable Purposes Act (U.S.T.C.P.A.) although several of them antedate the initial adoption of such Act which did not occur until 1954. In most instances, these statutes, which are generally applicable to corporate trustees as well as natural persons, provide for the exemption of several fairly broad classes of charitable institutions. Such an exemption is frequently provided for with respect to all incorporated educational, religious and hospital organizations but there is otherwise very little uniformity in this first principal group as to the kinds of charitable organizations so exempted.

It is readily apparent that an attorney general in one of our first group of 11 jurisdictions can reasonably expect to have a distinct advantage over his counterparts in most of the remaining states whenever he tries to assemble a useful body of enforcement information about the respective affairs of all the various affected trusts for charitable purposes which are being maintained within his state. Several other worthwhile local sources of information would nonetheless be available to an attorney general in the other 40 jurisdictions covered by our current study.

It should be observed that courts of equity have traditionally entertained a wide variety of suits to enforce the proper use and application of any and all kinds of trust funds without the benefit of any express statutory authority for such action. In any case involving a charitable trust, the attorney general of the particular state concerned is ordinarily treated as an appropriate representative of the general public for the purpose of instituting and prosecuting such an enforcement suit.

It is also an accepted general principle in the law of decedents' estates that no testamentary provisions for the creation of a charitable trust can become fully operative until after the will containing such provisions has been properly established by a statutory probate proceeding. A judicial accounting as to the receipt and disposition of the assets in each estate is commonly required in connection with each probate proceeding, and a detailed study of the resulting local records could thus be expected to uncover the identity and general nature of a comparatively large number of charitable trusts.

There are numerous differences in this extent to which the various states and the District of Columbia have made statutory provision for the filing of something more than one final accounting in connection with the administration of estates, or have imposed specific judicial accounting requirements for nontestamentary charitable trusts. Our survey indicates that 16 jurisdictions (Colorado, Delaware, Florida, Indiana, Kentucky, Louisiana, Maine, Nevada, New Mexico, New Jersey, North Carolina, Utah, Vermont, Virginia, West Virginia and Wis-