

# HOUSE BILL #326 HEARINGS

## DISTRIBUTED COMMENTS

October 10, 1995

James M. Edwards

I am a member of the Distribution Committee of the McCune Foundation created by the Will of Charles L. McCune, my great-uncle who died in 1979. I have been a member since 1990; my father is the Committee's Chairman, and a first cousin of mine is the third, and only other member. Our duties under the Will include (1) selecting the charitable beneficiaries of the foundation and determining the terms and amount of the grants, (2) oversight responsibility to redress breaches by the trustee of the prohibited transaction provisions of the Internal Revenue Code, and (3) voting the stock of the corporate parent of the trustee held in the portfolio.

The Foundation, established in 1979, has a market value exceeding \$300 million, and makes grants exceeding \$14 million per year, almost exclusively in Western Pennsylvania. We make grants in the general categories of health-care, education, social services, cultural and civic affairs, and economic and community development.

The sole trustee of the foundation is Integra Trust Company, a subsidiary of Integra Financial Corporation, successor to The Union National Bank. Charles McCune's younger brother was named as co-trustee, but he predeceased my great-uncle. This left then Union National, now Integra, as the sole trustee.

In the period from July, 1985 to November, 1989 the trustee utilized over \$15 million of the Foundation's assets to acquire additional securities of the trustee's parent, consisting of a debenture and common stock. As a result of these purchases the Foundation became minutely less than a 10% shareholder of the Bank's parent corporation and had a total of 23% of its equity portfolio concentrated in the Trustee's stock.

In 1991, we sought the appointment of family members as co-trustees in quiet conference and in exchanges of letters with the trustee, all to no avail. We petitioned the local court to have my uncle and myself appointed to the vacancy. The court has ruled that there is a vacancy in the office of the individual trustee; but the bank trustee has reacted angrily with multiple acts of hostility which have broken the relationship between our Distribution Committee and the trustee. As a result, the matter has become dormant and no individual trustee has been appointed.

In 1992, another family foundation in which I am involved, which was able to be moved under the document's terms, we did move. Integra had been acting as trustee on this \$80 million fund for approximately \$200,000/year as compensation. That year, a disinterested corporate trustee offered to perform this role for only \$80,000/year. This was reason enough to move the trust—to save \$120,000/year for charity!

Given the long litany of other troubles in the larger foundation, it occurred to some of us concerned to ask a disinterested corporate trustee what it might charge as a fee on the larger McCune Foundation. Lo and behold, on a fund which had been paying over \$350,000/year for trustee services, they bid \$180,000/year. This amounts to a savings of \$170,000/year which would go to charity. We petitioned to remove the trust to that corporate trustee partly on this basis, but again to no avail.

- To date, we have received no assistance from the Attorney General's office which is expected to engage in oversight of these matters. In fact, the Attorney General has written that he considers the trustee's purchases of its own securities to be perfectly proper.
- To date we have received no acceptable offers of settlement from this severely conflicted sole corporate trustee, while
- To date, we have incurred over \$500,000 in legal fees to enforce the provisions of the Will, and
- To date, the trustee has expended from the Foundation's assets a similar sum to defend itself. This is money which is not available to the charitable beneficiaries.

My point in airing this tawdry tale is to help you conclude that the Bill before you, allowing portability of trusts under request of the beneficiary would have helped our problem by allowing a grossly conflicted trustee to be replaced without expensive court proceedings.

The banking industry is changing very fast—right out from under us. It is not inconceivable that before the year 2000, we will not have a Pennsylvania headquartered bank serving this Commonwealth's needs. I do not believe that the grantors who placed their family's protection in the hands of local bankers considered this eventuality. The industry needs to benefit from the healthy competition which would result from your passage of Bill #326.

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I am a member of a Distribution Committee of a family foundation known as McCune Foundation. I have been a member since 1990. My father is the Committee's Chairman, and a first cousin of mine is the third, and only other member. Our duties under my great-uncle's will include 1) selecting the charitable beneficiaries of the foundation, 2) oversight of the investment portfolio of the foundation, and 3) voting the stock of certain shares in the portfolio.

The foundation, established in 1979, has a market value exceeding \$300 million, and makes grants exceeding \$14 million per year, almost exclusively in western Pennsylvania. We make grants in the general categories of health care, education, social services, cultural and civic affairs, and economic and community development.

The trustee of the foundation is Integra Trust Company, a subsidiary trust department of Integra Financial Corporation. Union National Bank and a deceased younger brother were named as co-trustees under my great-uncle's will. The deceased brother never served. My mother, now deceased, or her brother would have been the suitable replacements. This left then Union National as the sole trustee of a portfolio, one-third of which was its own shares. This, by itself, experts in the industry have told me is reason enough for addition of co-trustees.

In 1991, after raising the issue in quiet conference and in exchanges of letters with the trustee to no avail, we petitioned the local court to have my uncle and myself appointed in the vacancy. The bank trustee reacted angrily with multiple acts of hostility which have broken the relationship between our Distribution Committee and the trustee.

But it gets worse.

When we sought a second opinion on this behavior, and a solution to our problem, our new law firm discovered multiple acts of self-dealing involving many millions of dollars in the portfolio from 1985 through 1989. The trustee was buying its own stock. Think about it for a minute. That's like you, if you're trustee of Uncle Fred's foundation, paying down your mortgage with the money. It's illegal. It incurs penalties under IRS rules we are duty-bound to enforce as Committee Members.

Let me digress.

In 1992, another family foundation in which I am involved, which was able to be moved under the document's terms, we did move. Integra had been acting as trustee on this \$80 million fund for approximately \$200,000/ year as compensation. That year, PNB offered to perform this role for only \$80,000/ year. This was reason enough to move the trust--to save \$120,000/ year for charity!

Given the long litany of other troubles in the larger foundation, it occurred to some of us concerned to ask PNB what it might charge as a fee on the larger McCune Foundation. Lo and behold, on a fund which had been paying over \$400,000/ year for trustee services, they bid \$180,000/ year. This amounts to a savings of \$220,000/ year which would go to charity. We petitioned to remove the trust to PNB partly on this basis.

To date, we have recieved no assistance from the Attorney General's office which is expected to engage in oversight of these matters

To date we have recieved little assistance or understanding of these matters from the local courts

To date we have recieved no acceptable offers of settlement from this severely conflicted sole trustee bank trust department, while

To date we have incurred over \$500,000 in legal fees to plead our case, and

To date the trustee has expended a similar sum to defend itself. This is money which is not available to the not-for-profit beneficiaries.

My point in airing this taudry tale is to help you conclude that the bill before you, allowing portability of trusts under request of the beneficiary would have helped our problem. It would have afforded us the leverage to cure these abuses

without impairment to the important mission and work of the McCune Foundation.

The banking industry is changing very fast--right out from under us. It is not inconcievable that before the year 2000, we will not have a Pennsylvania headquartered bank serving this commonwealth's needs. I do not believe that the grantors of the trusts which benefit heirs meant for that eventuality. The industry needs to benefit from the healthy competition which would result from your passage of Bill # 326.