

NEW YORK

ESTATES, POWERS AND TRUSTS LAW ARTICLE 8. CHARITABLE TRUSTS PART 1. RULES GOVERNING CHARITABLE TRUSTS

NY CLS EPTL § 8-1.4 (2009)

§ 8-1.4. Supervision of trustees for charitable purposes

(a) For the purposes of this section, "trustee" means (1) any individual, group of individuals, executor, trustee, corporation or other legal entity holding and administering property for charitable purposes, whether pursuant to any will, trust, other instrument or agreement, court appointment, or otherwise pursuant to law, over which the attorney general has enforcement or supervisory powers, (2) any non-profit corporation organized under the laws of this state for charitable purposes and (3) any non-profit foreign corporation organized for charitable purposes, doing business or holding property in this state. Neither a foreign corporation nor a trustee acting under the will of, or an agreement executed by, a non-resident of this state shall become subject to the provisions of this section merely by reason of maintaining a bank, custody, investment or similar account in this state.

(b) The registration and reporting provisions of this section do not apply to (1) the United States, any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or to any of their agencies or governmental subdivisions, (2) any trustee which is required by any other provision of law to render a full, complete and itemized annual financial report to the congress of the United States or to the legislature of this state, provided that such report contains the information required of trustees pursuant to this article, (3) corporations organized under the religious corporations law and other religious agencies and organizations, and charities, agencies and organizations operated, supervised or controlled by or in connection with a religious organization, (4) educational institutions incorporated under the education law or by special act, (5) any hospital, (6) fraternal, patriotic, veterans, volunteer firefighters, volunteer ambulance workers, social, student or alumni organizations and historical societies chartered by the New York state board of regents, (7) a trust for which there is a corporate trustee acting as sole trustee or co-trustee under the terms of a will of a decedent who died domiciled in a state other than New York or a trust instrument executed by a non-resident of the state of New York, (8) any trust in which and so long as the charitable interest is deferred or contingent, (9) any person who, in his or her capacity as an officer, director or trustee of any corporation or organization mentioned in this paragraph, holds property for the religious, educational or charitable purposes of such corporation or organization so long as such corporation or organization is registered with the attorney general pursuant to this section, (10) any cemetery corporation subject to the provisions of article fifteen of the not-for-profit

corporation law, (11) the state parent teachers association and any parent teachers association affiliated with an educational institution that is subject to the jurisdiction of the state education department, (12) any corporation organized under article forty-three of the insurance law. The provisions of this subdivision shall apply only to the registration and reporting requirements of this section and shall not limit, impair, change or alter any other provision of this article, the not-for-profit corporation law or any other provision of law.

(c) The attorney general shall establish and maintain a register of all trustees containing such information as the attorney general deems appropriate, and to that end may conduct such investigations as he or she deems necessary and shall obtain from public records, court officers, taxing authorities, trustees and other sources without the payment of any fee or charge, whatever information, copies of instruments, reports and records are needed for the establishment and maintenance of the register.

(d) Every trustee shall file with the attorney general, within six months after any property held by him or her or any income therefrom is required to be applied to charitable purposes, a copy of the instrument providing for his or her title, powers and duties; provided, however, that any trustee currently registered with the department of law pursuant to article 7-A of the executive law shall be deemed to have complied with this paragraph. If any property held by a trustee or any income therefrom is required to be applied to charitable purposes at the time this section becomes effective, the filing shall be made within six months thereafter.

(e) (1) Whenever any trustee or other person, holding property or any income therefrom, which may be required at any time to be devoted to charitable purposes, shall file in any court in this state (A) any petition for instructions relating to the administration or use of such property or income, (B) any petition for the construction of the instrument under which such property or income is held, (C) any petition respecting the disposition or distribution of such property or income or (D) any accounting, due notice of the action or proceeding shall be served by the petitioner upon the attorney general together with a copy of any petition, accounting, will or trust instrument.

(2) Whenever any instrument of a testamentary nature which provides for a disposition for charitable purposes is the subject of (A) an application for denial of probate, (B) objections to probate or (C) an application for approval of a compromise agreement in respect of probate, due notice of the action or proceeding shall be served by the petitioner upon the attorney general together with a copy of the instrument and of any such application, objections or agreement.

(f) (1) Every trustee shall, in addition to filing copies of any instrument required under paragraph (d) of this section, file with the attorney general and all identified current charitable beneficiaries written annual financial reports, under penalties for perjury, on forms prescribed by the attorney

general, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, and shall, file with the attorney general and all identified current charitable beneficiaries a notice of the termination of the interest of any party in a trust that would cause all or part of the trust assets to be applied to charitable purposes or to have the income therefrom so applied, in accordance with rules and regulations of the attorney general.

(2) Trustees required to report to the attorney general under article 7-A of the executive law shall comply with this paragraph by filing with the attorney general in addition to any other reports required herein, copies of the financial reports required by [section 172-b of the executive law](#) unless such reports have been filed previously.

(g) Unless the filing of reports is suspended as herein provided, the first report of any trustee shall be filed no later than six months after the end of the fiscal year of the trustee during which he or she becomes subject to this section.

(h) The attorney general shall make rules and regulations necessary for the administration of this section, including rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He or she may classify trusts, estates, corporations and other trustees as to purpose, nature of assets, duration, amount of assets, amounts to be devoted to charitable purposes, or otherwise, and may establish different rules for different classes as to time and nature of the reports required, to the ends that he or she shall receive current financial reports as to all such trusts, estates, corporations or other trustees which will enable him or her to ascertain whether they are being properly administered. The attorney general may suspend the filing of financial reports as to a particular trustee for a reasonable, specifically designated time upon written application of the trustee, signed under penalties for perjury, and filed with the attorney general and after the attorney general has filed in the register of trustees a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports during the term of such suspension are not required for proper supervision by his or her office. The filing of the financial reports required by this section, or the exemption from such filing or the suspension therefrom, shall not have the effect of absolving trustees from any responsibility for accounting for property or income held by them for charitable purposes. A copy of an account or other financial report filed by a trustee in any court in this state, if the account or other financial report substantially complies with the rules and regulations of the attorney general, may be filed as a financial report under this section.

(i) The attorney general may investigate transactions and relationships of trustees for the purpose of determining whether or not property held for charitable purposes has been and is being properly administered. The attorney general, his or her assistants, deputies or such other officers as may be designated by him or her, are empowered to subpoena any trustee, agent, fiduciary,

beneficiary, institution, association or corporation or other witness, examine any such witness under oath and, for this purpose, administer the necessary oaths, and require the production of any books or papers which they deem relevant to the inquiry.

(j) No person shall be excused from attending such inquiry pursuant to the mandate of a subpoena, or from producing a paper or book, or from being examined or required to answer a question on the ground of failure of tender or payment of a witness fee or mileage, unless at the time of such appearance or production, as the case may be, such witness makes a demand for such payment as a condition precedent to the offering of the testimony or production required by the subpoena and such payment is not thereupon made. The provisions for payment of a witness fee or mileage do not apply to any trustee or other person holding funds for charitable purposes, or to any person in the employ of any such person, whose conduct or practices are being investigated.

(k) If a person subpoenaed to attend such inquiry fails to obey the mandate of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce a paper or book when ordered so to do by the officer conducting such inquiry, he or she shall be subject to proceedings under subdivision (b) of [section 2308 of the civil practice law and rules](#).

(l) The register, copies of the instruments and the reports filed with the attorney general shall be open to public inspection, subject to reasonable rules and regulations adopted by the attorney general, which may include such limitations as to type of information subject to inspection or purpose of inspection as the attorney general shall deem to be in the public interest. The attorney general shall withhold from public inspection copies of any report filed with any other governmental agency of this state or of the United States and required by law to be kept confidential by such agency, and shall, upon request of the trustee, withhold from public inspection that portion of any instrument filed which does not relate to charitable purposes and which is not otherwise of public record.

(m) The attorney general may institute appropriate proceedings to secure compliance with this section and to secure the proper administration of any trust, corporation or other relationship to which this section applies. The powers and duties of the attorney general provided in this section are in addition to all other powers and duties he or she may have. No court shall modify or terminate the powers and responsibilities of any trust, corporation or other trustee unless the attorney general is a party to the proceeding, but nothing in this section shall otherwise impair or restrict the jurisdiction of any court with respect to the matters covered by it. The failure of any trustee to register or to file reports as required by this section may be ground for judicial removal of any person responsible for such failure.

(n) This section shall apply regardless of any contrary provisions of any instrument and shall be liberally construed so as to effectuate its general purpose of protecting the public interest in charitable uses, purposes and dispositions.

(o) Every officer, agency, board or commission of this state or political subdivisions of this state or agencies thereof receiving applications for exemption from taxation of any trustee subject to this section shall annually file with the attorney general a list of all applications received during the year and shall notify the attorney general of any suspension or revocation of a tax exempt status previously granted.

(p) The attorney general shall collect from each trustee at the time of filing of the periodic reports required by this section a fee for the filing of such reports as follows:

(1) Twenty-five dollars, if the net worth of the property held by such trustee for charitable purposes is less than fifty thousand dollars,

(2) Fifty dollars if such net worth is fifty thousand dollars or more but less than two hundred and fifty thousand dollars,

(3) One hundred dollars if such net worth is two hundred and fifty thousand dollars or more but less than one million dollars,

(4) Two hundred fifty dollars if such net worth is one million dollars or more but less than ten million dollars,

(5) Seven hundred and fifty dollars if such net worth is ten million dollars or more but less than fifty million dollars, and

(6) One thousand five hundred dollars if such net worth is fifty million dollars or more.

(q) Any trustee shall be exempt from the annual reporting requirements of this section by filing each year with the attorney general a verified statement executed by such trustee attesting that during the annual reporting period (1) the gross receipts received by said trustee during such annual reporting period were less than twenty-five thousand dollars and that (2) the total assets held by such trustee at no time during such annual reporting period exceeded twenty-five thousand dollars. For the purposes of this paragraph, gross receipts mean the total received during the financial reporting period of (A) gifts, grants, and contributions; (B) gross income and revenue from all sources; and (C) gross amounts from sales of assets, other than inventory; and total assets mean the total principal and the accumulated income, if any, held by such trustee for purposes of charitable distribution on any day during such annual reporting period.

(r) A trustee who fails to comply with paragraph (d), (f) or (g) of this section shall, after notice of said failure served upon him or her by the attorney general by certified mail, return receipt requested, be liable to the state of New York for a fine of ten dollars a day not to exceed one thousand dollars for each failure to comply after the expiration of the thirty day period following the receipt of the notice from the attorney general, except that the time to comply may be extended by the attorney general. Where the attorney general, after such thirty day period has expired, finds that the failure to comply with paragraph (d), (f) or (g) of this section is due to excusable ignorance or inadvertence or other reasonable cause, the attorney general shall waive the fine imposed by this paragraph.

(s) A trustee shall not be qualified to make application for funds or grants or to receive such funds from any department or agency of the state without certifying compliance with paragraphs (d), (f) and (g) of this section and all applicable registration and reporting requirements of article seven-A of the executive law.

MINNESOTA

PROPERTY INTERESTS AND LIENS

CHAPTER 501B TRUSTS

SUPERVISION OF CHARITABLE TRUSTS AND TRUSTEES ACT

501B.33 CITATION

Sections 501B.33 to 501B.45 may be cited as the "Supervision of Charitable Trusts and Trustees Act."

501B.34 CHARITABLE TRUSTS; SUPERVISION BY ATTORNEY GENERAL

Sections 501B.33 to 501B.45 apply to trustees holding property for charitable purposes. In connection with the supervision, administration, and enforcement of charitable trusts, the attorney general has the rights, duties, and powers in sections 501B.33 to 501B.45, and common law and statutory rights, duties, and powers.

501B.35 DEFINITIONS

Subdivision 1. Scope.

The definitions in this section apply to sections 501B.31 to 501B.45 and do not modify or abridge any law or rule respecting the nature of a charitable trust or the nature and extent of the duties of a trustee except duties imposed by sections 501B.31 to 501B.45.

Subd. 2. Charitable purpose.

"Charitable purpose" means an actual or purported charitable, philanthropic, religious, social service, educational, eleemosynary, or other public use or purpose.

Subd. 3. Charitable trust.

"Charitable trust" means a fiduciary relationship with respect to property that arises as a result of a manifestation of an intention to create it, and that subjects the person by whom the property is held to equitable duties to deal with the property for a charitable purpose. As used in this definition, property includes all income derived from fees for services.

Subd. 4. Trustee.

"Trustee" means a person or group of persons either in an individual or a joint capacity, or a director, officer, or other agent of an association, foundation, trustee corporation, corporation, or other legal entity who is vested with the control or responsibility of administering property held for a charitable purpose.

501B.36 REGISTRATION AND REPORTING

The registration and reporting provisions of sections 501B.37 and 501B.38 apply to a charitable trust, including an organization with a charitable purpose, that has gross assets of \$25,000 or more at any time during the year, except that the provisions do not apply to:

- (1) a charitable trust administered by the United States or a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any of their agencies or subdivisions;
- (2) a religious association organized under chapter 315 or chapter 317A;
- (3) a charitable trust organized and operated exclusively for religious purposes and administered by a religious association organized under chapter 315 or 317A;
- (4) an organization described in [section 509\(a\)\(3\) of the Internal Revenue Code of 1986](#) and operated, supervised, or controlled by or in connection with one or more organizations described in clauses (2) to (5); a pooled income fund as defined in [section 642\(c\)\(5\) of the Internal Revenue Code of 1986](#) maintained by an organization described in clauses (2) to (5); or a charitable remainder annuity trust or unitrust, as defined in [section 664 of the Internal Revenue Code of 1986](#);
- (5) a trust in which the only charitable interest is a contingent interest for which no charitable deduction has been allowed for Minnesota income, inheritance, or gift tax purposes or a trust in which not all of the unexpired interests are devoted to one or more charitable purposes and in which the only charitable interest is an annuity or an income interest with respect to which a charitable deduction is allowed the trust under applicable Minnesota income tax laws;
- (6) an organization registered with the attorney general pursuant to sections 309.52 and 309.53;
- (7) a trust for individual and charitable beneficiaries that is described in [section 4947\(a\)\(2\) of the](#)

[Internal Revenue Code of 1986](#), also known as a split-interest trust; or

(8) a charitable gift, bequest, or devise not held and continued by a private express trust or corporation even though the gift, bequest, or devise creates a fiduciary relationship, unless there is no named charitable beneficiary in existence or unless a named charitable beneficiary elects in a writing filed with the attorney general and with the fiduciary to come within the provisions of sections 501B.37 and 501B.38.

501B.37 REGISTER OF TRUSTS AND TRUSTEES

Subdivision 1. Establishment of register; transfer to attorney general.

The attorney general shall establish and maintain a register of charitable trusts and trustees subject to sections 501B.33 to 501B.45.

Subd. 2. Filing of instruments.

Except as otherwise provided in section 501B.36, a charitable trust shall register and file with the attorney general a copy of its articles of incorporation or the instrument that created the charitable trust, including any amendments, within three months after the charitable trust first receives possession or control of property authorized or required to be applied, either at present or in the future, for charitable purposes.

Subd. 3. Registration fee.

A \$25 registration fee shall be paid by every charitable trust filing the information required by this section.

501B.38 INFORMATION FILING

Subdivision 1. Deadlines; extensions.

A charitable trust subject to sections 501B.33 to 501B.45 must file with the attorney general a copy of its federal tax or information return, including all schedules and amendments, submitted by the charitable trust to the Internal Revenue Service for the period covered in the trust's accounting year last completed. If the charitable trust does not file a federal tax or information return, it shall file a balance sheet and a statement of income and expenses for the accounting

year last completed.

Subd. 1a. Extensions.

The information required by this section must be filed annually on or before the 15th day of the fifth month following the close of the charitable trust's taxable year as established for federal tax purposes. The time for filing may be extended by application to the attorney general, for up to six months, provided the applicant has requested an extension to file its federal tax return under [section 6081 of the Internal Revenue Code of 1986](#). A charitable trust that files the information required under this subdivision with the attorney general is not required to file the same information with the commissioner of revenue.

Subd. 2. Suspension of filing.

The attorney general may suspend the filing requirements under subdivision 1 for a particular charitable trust for a reasonable, specifically designated time on written application of the trustee filed with the attorney general. If the filing requirements are suspended, the attorney general shall file in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced by the suspension and that the information required by this section is not required for proper supervision by the attorney general's office.

Subd. 3. Filing fee.

A \$25 filing fee shall be paid by every charitable trust filing the information required by this section.

501B.39 PUBLIC INSPECTION OF RECORDS

The register, copies of instruments, and the reports filed with the attorney general must be open to public inspection.

501B.40 INVESTIGATORY POWERS OF THE ATTORNEY GENERAL; CUSTODIANS TO FURNISH COPIES OF RECORDS

Subdivision 1. Discovery.

The attorney general may conduct investigations that are reasonably necessary for: (1) the administration of sections 501B.33 to 501B.45; or (2) determining whether property held for charitable purposes is properly administered. In connection with an investigation under this

section, the attorney general may obtain discovery from an agent, trustee, fiduciary, beneficiary, institution, association, corporation, or other person regarding a matter, fact, or circumstance, not privileged, that is relevant to the subject matter involved in the investigation. The discovery may be obtained without commencement of a civil action and without leave of court, except as expressly required by subdivision 2. The applicable protective provisions of rules 26.02, 30.02, and 30.04, of the Rules of Civil Procedure for the District Court apply to discovery procedures instituted under this section. The attorney general or a person to whom discovery is directed may apply to and obtain leave of the district court in order to reduce or extend the time requirements of this subdivision, and, upon a showing of good cause, the district court shall order a reduction or extension. In order to obtain discovery, the attorney general may:

(1) serve written interrogatories on a person. Within 20 days after service of interrogatories, separate written answers and objections to each interrogatory must be mailed to the attorney general;

(2) upon reasonable written notice of no less than 15 days, require a person to produce for inspection and copying documents, papers, books, accounts, letters, photographs, objects, or tangible things in the person's possession, custody, or control; and

(3) upon reasonable written notice of no less than 15 days, take the testimony of a person by deposition as to a fact or opinion relevant to the subject matter involved in the pending investigation.

Subd. 2. Order by court.

If a person fails or refuses to answer interrogatories, produce materials, or be examined under oath, the attorney general may, upon notice to the person, apply to the district court in the county where the person resides or is found, for an order to compel compliance. On a showing of cause by the attorney general, the court may issue an order to compel compliance with the discovery procedures authorized by this section.

Subd. 3. Public records.

A custodian of records of a court having jurisdiction of probate matters or of charitable trusts, and a custodian of records of a department, agency, or political subdivision of this state shall, upon request, furnish to the attorney general, free of charge, copies of records relating to the subject of sections 501B.33 to 501B.45.

Subd. 4. Report of applications for tax exemption.

Every officer, agency, board, or commission of this state that receives an application for exemption from taxation from a charitable trust subject to sections 501B.33 to 501B.45 shall annually file with the attorney general a list of all applications received during the year and shall notify the attorney general of the suspension or revocation of a tax exempt status previously granted.

501B.41 BREACH OF TRUST; PROCEEDINGS TO SECURE COMPLIANCE

Subdivision 1. Enforcement powers.

The attorney general may institute appropriate proceedings to obtain compliance with sections 501B.33 to 501B.45 and the proper administration of a charitable trust. The powers and duties of the attorney general in this section are in addition to all other powers and duties.

Subd. 2. Participation by attorney general.

The attorney general must be notified of, and has the right to participate as a party in, all court proceedings:

- (1) to terminate a charitable trust or to liquidate or distribute its assets;
- (2) to modify or depart from the objects or purposes of a charitable trust as contained in the instrument governing the trust, including a proceeding for the application of the doctrine of cy pres;
- (3) to construe the provisions of an instrument with respect to a charitable trust;
- (4) to review an accounting of a charitable trust submitted by a trustee; or
- (5) involving a charitable trust when the interests of the uncertain or indefinite charitable beneficiaries may be affected.

Subd. 3. Exemption from notice requirement.

The attorney general need not be provided with notice under subdivision 2 of a charitable gift, devise, or bequest (1) for which the donor or testator has named as a charitable beneficiary an organization that is then in existence; or (2) that is not held and continued by a private express trust or corporation, whether or not the gift, devise, or bequest creates a fiduciary relationship.

This subdivision does not affect any other notice to the attorney general required by this chapter.

Subd. 4. Failure to give notice.

If proceedings are commenced without service of process and service of the pleadings upon the attorney general, a judgment or order rendered in the proceedings is voidable, unenforceable, and, upon the attorney general's motion seeking relief, may be set aside. With respect to the proceedings, no compromise, settlement agreement, contract, or judgment agreed to by any or all of the parties having or claiming to have an interest in a charitable trust is valid unless the attorney general was made a party to the proceedings and joined any agreement or the attorney general, in writing, waived the right to participate. The attorney general may enter into a compromise, settlement agreement, contract, or judgment that the attorney general believes is in the best interests of the people of the state and the uncertain or indefinite beneficiaries.

Subd. 5. Wills.

The personal representative shall send to the attorney general a copy of the petition or application for probate together with a copy of the will and any codicils that are being offered for probate:

- (1) when a will provides for a bequest or devise for a charitable purpose for which there is no named charitable beneficiary or for which there is then in existence no named charitable beneficiary;
- (2) when a will provides for bequests or devises for charitable purposes in excess of \$150,000;
- (3) when a will provides for a bequest or devise to a named charitable beneficiary that is in receivership; or
- (4) upon a written request served on the personal representative by a named charitable beneficiary prior to the order allowing the final account or, in unsupervised proceedings, within 30 days after service of the final account on the charitable beneficiary.

The personal representative shall serve the documents on the attorney general and file with the appropriate court a copy of the affidavit of service on the attorney general. If the personal representative was requested to notify the attorney general of the probate proceedings according to clause (4), the requesting party shall file with the court a copy of the request and the affidavit of service on the personal representative.

If objections are filed to a will or codicil containing any bequest or devise to a charitable trust,

the person filing the objections, at least 14 days before the hearing, shall send to the attorney general a copy of the objections, a copy of the petition or application for probate, a copy of the will, and any codicil that has been offered for probate.

Any service upon the attorney general under this section must be made personally or by registered or certified mail, return receipt requested. The attorney general may become a party in the estate proceedings.

Subd. 6. Breach of trust.

The failure of a trustee to register under section 501B.37, to file annual reports under section 501B.38, or to administer and manage property held for charitable purposes in accordance with law or consistent with fiduciary obligations constitutes a breach of trust.

Subd. 7. Civil actions.

The attorney general may begin a civil action in order to remedy and redress a breach of trust, as described in subdivision 6 or as otherwise provided by law, committed by a trustee subject to sections 501B.33 to 501B.45. If it appears to the attorney general that a breach of trust has been committed, the attorney general may sue for and obtain:

- (1) injunctive relief against the breach of trust or threatened breach of trust;
- (2) the removal of a trustee who has committed or is committing a breach of trust;
- (3) the recovery of damages; and
- (4) another appropriate remedy.

501B.42 CONTRARY PROVISIONS OF INSTRUMENT INVALID

Sections 501B.33 to 501B.45 apply regardless of contrary provisions of an instrument.

501B.43 COST OF INVESTIGATIONS AND PROCEEDINGS; REGISTRATION AND FILING FEES

Subdivision 1. Expenses payable.

In a proceeding brought by the attorney general or in which the attorney general intervenes under sections 501B.33 to 501B.45, the judgment or order may provide that the trustee must pay the reasonable expenses necessarily incurred by the attorney general in the investigation and prosecution of the action, including attorneys' fees, if it is determined in the proceeding that the trustee has been guilty of an intentional or grossly negligent breach of trust.

Subd. 2. Disposition of money.

All money received by the attorney general under this section must be deposited in the state treasury and credited to the general fund.

501B.44 IMMUNITY OF CHARITABLE TRUSTS

A charitable trust is an "organization" for purposes of section 317A.257, and that section applies to charitable trusts.

501B.45 SALE OF BANKS OWNED BY CHARITABLE TRUSTS

Subdivision 1. Definitions.

For the purpose of this section, "charitable trust" means a charitable trust subject to supervision by the attorney general under the Supervision of Charitable Trusts and Trustees Act, sections 501B.33 to 501B.45, that is required to divest excess business holdings by [section 4943 of the Internal Revenue Code of 1986](#) and that owned 100 percent of a bank holding company on May 26, 1969, the date of enactment of [section 4943 of the Internal Revenue Code of 1954](#).

Subd. 2. Authorization.

The stock or assets of one or more banks or a bank holding company owned directly or indirectly by a charitable trust may be sold, assigned, merged, or transferred by the charitable trust under the procedures in section 48.93 to a bank holding company, bank, or other qualified entity as permitted by applicable banking laws without regard to whether the entity acquiring the stock or assets is located in a reciprocating state.

Subd. 3. Legislative intent.

It is the express intention of the Minnesota legislature to act pursuant to United States Code, title

12, section 1842(d), to permit certain charitable trusts to sell, assign, or transfer certain financial institutions' assets without regard to whether the entity acquiring the assets of the charitable trust is located outside of this state.

Subd. 4. Additional acquisitions.

A bank holding company, other than a reciprocating state bank holding company as defined in section 48.92, subdivision 8, that directly or indirectly acquires control of a bank located in this state under the provisions of this section may acquire additional bank assets through the expenditure of an annual amount not to exceed five percent of the Minnesota assets of the acquired bank holding company as of December 31 of the preceding year. The restrictions within this subdivision apply only until the bank holding company making an acquisition under this section becomes a reciprocating state bank holding company. This section does not prohibit the bank holding company from being granted a charter for a de novo bank or from establishing de novo detached facilities pursuant to Minnesota law.

MAINE

TITLE 5. ADMINISTRATIVE PROCEDURES AND SERVICES

PART 1. STATE DEPARTMENTS

CHAPTER 9. ATTORNEY GENERAL

5 M.R.S. § 194 (2009)

§ 194. Public charities

1. DEFINITION. As used in this section and sections 194-A to 194-H and section 194-K, "public charity" means an entity formed primarily for charitable purposes, including but not limited to:

A. A corporation formed under Title 13 or Title 13-B primarily for charitable purposes; and

B. A charitable trust.

2. APPLICATION; FUNDS. The Attorney General shall enforce due application of funds given or appropriated to public charities within the State and prevent breaches of trust in the administration of public charities.

3. GIFT. A gift to a public charity made for a public charitable purpose is deemed to have been made with a general intention to devote the property to public charitable purposes, unless otherwise provided in writing in the gift instrument.

4. PARTY TO PROCEEDINGS. The Attorney General must be made a party to all judicial proceedings in which the Attorney General is interested in the performance of the Attorney General's duties under subsection 2.

5. INVESTIGATION . The Attorney General may conduct an investigation using the methods set forth in subsections 6 and 7 if:

A. The Attorney General reasonably believes that a public charity has engaged or is about to engage in one of the following acts or practices:

1) Consummation of a conversion transaction as defined in section 194-B without

compliance with the applicable provisions of sections 194-C through 194-H; or

2) The application of funds or assets of a public charity:

a) In violation of statute;

b) For noncharitable purposes unrelated to the operations of the public charity; or

c) For private inurement or excess benefits provided to directors, officers, disqualified persons or others deemed insiders under applicable federal law for tax-exempt organizations; and

B. The Attorney General has applied to a Justice of the Superior Court for approval to conduct the investigation and the justice has granted that approval. The application for approval may be filed ex parte, and the justice shall approve the application if the justice finds that the conditions set forth in paragraph A have been met.

6. SCOPE AND POWERS RELATED TO INVESTIGATION . The authority of the Attorney General to conduct an investigation under this section is limited to investigation of the acts or practices described in subsection 5, paragraph A. In conducting the investigation, the Attorney General has authority to:

A. Take testimony under oath;

B. Examine or cause to be examined any documentary material of whatever nature relevant to such acts or practices; and

C. Require attendance during examination of documentary material under paragraph B of any person having knowledge of the documentary material and take testimony under oath or acknowledgement in respect to that documentary material.

7. TAKING TESTIMONY; EXAMINING DOCUMENTS. The taking of testimony and examination under subsection 6 must take place in the county where the testifying person resides or has a place of business or, if the parties consent or the testifying person is a nonresident or has no place of business within the State, in Kennebec County.

A. Notice of the time, place and cause of the taking of testimony, examination or attendance under this subsection must be given by the Attorney General at least 30 days prior to the date of the taking of testimony or examination, except that, upon application and good cause shown, a Justice of the Superior Court may order a shorter period of notice, but not less than 10 days.

B. Service of a notice under paragraph A may be made by:

1) Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

2) Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or

3) Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business.

C. Each notice under this subsection must:

1) State the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person;

2) State the general subject matter of the investigation, the alleged violation that is under investigation and the title and section of statute, if any, governing the alleged violation;

3) Describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the material demanded;

4) Prescribe a return date by which the documentary material must be produced; and

5) Identify the members of the Attorney General's staff to whom the documentary material must be made available for inspection and copying.

D. A notice to produce documentary information or to give testimony under this subsection may not contain a requirement that would be unreasonable if contained in a subpoena duces tecum issued by a court of the State and may not require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of the State.

E. Any documentary material or other information produced by a person pursuant to this subsection and subsection 6 may not, unless otherwise ordered by a court of the State for good cause shown, be disclosed to a person other than an authorized agent or representative of the Attorney General unless with the consent of the person producing the documentary material.

F. The Superior Court for Kennebec County or a Superior Court in any other county in which a person who is served notice pursuant to this section resides or has that person's usual place of business may issue orders concerning compliance with the notice, modification or quashing of the notice and contempt in the same manner as if the notice were a subpoena governed by Rule 45 of the Maine Rules of Civil Procedure. The recipient of a notice under this section has the protections accorded by Rule 45 to a person who is subject to a subpoena.

8. AUTHORITY REGARDING CONVERSION PROCEEDINGS. If a public charity files notice of a conversion transaction under section 194-D or applies for approval of such a transaction under section 194-E or 194-F, the authority of the Attorney General with regard to the notice or approval and the proceedings for approval are governed by sections 194-B to 194-K and the provisions of this section do not apply.

9. NOTICE TO THE SUPERINTENDENT OF INSURANCE. If the Attorney General intends to conduct an investigation of a public charity that is subject to regulation by the Superintendent of Insurance, the Attorney General shall notify the superintendent that an investigation is being initiated. The Attorney General shall also notify the superintendent of the resolution of any such investigation.

[Note – additional sections 194-A through 194-K relate specifically to conversion transactions, aimed mostly, but not entirely, at health care conversions. Maine has extended the elaborate provisions designed to deal with hospital conversions, to all public charities. Contrast the states that have enacted health care conversion statutes, but haven't applied them more broadly to other kinds of charities, and, e.g., Ohio, which has a statute on health care conversions, but has also added a provision to the Supervision of Charitable Trustees part of the Code that reaches all charities, but is much less elaborate than Maine's. That section follows the Maine statutes below]

§ 194-A. Nonprofit hospital and medical service organizations

1. DEFINITIONS. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affiliate" means a person who directly or indirectly controls or is controlled by or is under

common control with the person specified.

B. "Charitable authority" means the Attorney General's authority over charities under section 194, under the Attorney General's corresponding common law authority and under the Maine Nonprofit Corporation Act, Title 13-B.

C. "Charitable trust" means the entity described in subsection 5, paragraph B, subparagraph (1).

* * * * *

§ 194-B. Definitions

As used in this section and sections 194-C to 194-K, unless the context otherwise indicates, the following terms have the following meanings.

1. **CONTROL.** "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, including but not limited to situations in which the power is the result of an official position with the person or a corporate office held by an individual.

2. **CONVERSION TRANSACTION.** "Conversion transaction" means the sale, transfer, lease, exchange, transfer by exercise of an option, conveyance, conversion, merger or other disposition or the transfer of control or governance of the assets or operations of a public charity to a person other than a public charity incorporated or domiciled in this State. A disposition or transfer constitutes a conversion transaction regardless of whether it occurs directly or indirectly and whether it occurs in a single transaction or a related series of transactions. If exercise of an option constitutes a conversion transaction, any consideration received for the granting of the option must be considered part of the transaction for purposes of applying the review criteria in section 194-G. "Conversion transaction" does not include a transaction that supports or continues the charitable activities of the public charity, including but not limited to:

A. Granting of encumbrances in the ordinary course of business, such as security interests or mortgage deeds with respect to assets owned by the public charity or any wholly owned subsidiary to secure indebtedness for borrowed money, the net proceeds of which are paid solely to the public charity or its wholly owned subsidiaries or are applied to the public charity's charitable mission, and the foreclosing or other exercise of remedies permitted with respect to such encumbrances;

B. Sales or transfers for fair market value of:

1) Any interest in property owned by the public charity or any wholly owned subsidiary, the net proceeds of which are paid solely to the public charity or any wholly owned subsidiary; or

2) Money or monetary equivalents owned by a public charity or any wholly owned subsidiary in exchange for an interest in property, including securities as defined in [Title 32, section 16102](#), subsection 28, to be held by the public charity or any wholly owned subsidiary;

C. Awards, grants or payments to or on behalf of intended beneficiaries, consistent with the public charity's charitable purpose; and

D. A change in the membership of the board of directors or officers of a public charity.

3. FAIR MARKET VALUE. "Fair market value" means the most likely value or range of values that assets, tangible or intangible, being sold would have in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and in their own best interest and a reasonable time being allowed for exposure in the open market. If the value of the assets being converted is \$ 500,000 or more, the appraisal must include a value representing volunteer efforts and tax exemptions, if any, received during the operation of the public charity.

4. INDEPENDENT APPRAISAL OF THE FAIR MARKET VALUE. "Independent appraisal of the fair market value" means an appraisal conducted by persons independent of all parties to a proposed conversion transaction and experienced and expert in the area of appraisal of the type and form of property being valued. The appraisal must be conducted using professionally accepted standards for the type and form of property being valued. The appraisal must contain a complete and detailed description of the elements that make up the appraisal values produced and detailed support for the conclusions reached in the appraisal.

5. PERSON. "Person" means an individual, partnership, trust, estate, corporation, association, joint venture, joint stock company or other organization.

6. PUBLIC CHARITY. "Public charity" has the same meaning as in section 194.

§ 194-C. Notice and approval for conversion transaction

1. NOTICE OR APPROVAL REQUIRED. Prior to completing a conversion transaction, a public charity must:

A. If the fair market value of assets to be converted in the transaction is \$ 500,000 or more, obtain approval of the court in accordance with section 194-F;

B. If the fair market value of assets to be converted in the transaction is less than \$ 500,000 but at least \$ 50,000, obtain approval from the Attorney General in accordance with section 194-E or, if the Attorney General does not approve the transaction, obtain approval from the court in accordance with section 194-F; or

C. If the value of the transaction is less than \$ 50,000, provide notice to the Attorney General in accordance with section 194-D.

2. APPRAISAL REQUIRED. Fair market value must be determined by an independent appraisal for conversion transactions with a fair market value of \$ 50,000 or more. If the appraisal provides a range of values, the highest point of the range determines which section of law applies to the transaction pursuant to subsection 1.

3. FAILURE TO COMPLY WITH THIS SECTION OR SECTIONS 194-D TO 194-H. A transaction consummated in violation of any provision of this section or sections 194-D to 194-H is voidable. Officers and directors who receive private inurement or excess benefits from such a transaction are subject to the civil penalties provided in section 194-K.

4. APPLICABILITY TO NONPROFIT HOSPITAL OR MEDICAL SERVICE ORGANIZATIONS. This section, section 194-B and sections 194-D to 194-K do not apply to a corporation or other entity licensed under Title 24, chapter 19. A conversion of a corporation or other entity licensed under Title 24, chapter 19 is governed by section 194-A and [Title 24, section 2301](#), subsection 9-D.

§ 194-D. Conversion transactions less than \$ 50,000

A public charity shall provide written notice to the Attorney General of its intent to enter into a conversion transaction if the value of the transaction is less than \$ 50,000. The notice must include the name of the public charity, the value of the assets to be converted and the entity to which the assets will be transferred. Twenty days after providing notice to the Attorney General in accordance with this section, the public charity is deemed to be in compliance with section 194-C and this section unless the Attorney General notifies the public charity within those 20 days that the value of the transaction is \$ 50,000 or more or that the filing otherwise fails to comply with this section.

The Attorney General is not required to take any action on notices received under this section, except that, upon request of a public charity that has properly provided notice under this section, the Attorney General shall issue a letter indicating that the public charity has complied with its obligation under this section, section 194-C and sections 194-E to 194-H.

§ 194-E. Attorney General approval without court review

1. **FILING WITH ATTORNEY GENERAL.** To obtain approval of a conversion transaction when the independent appraisal of the fair market value of the assets to be converted is \$ 50,000 or more but is less than \$ 500,000, a public charity must file a written request for approval with the Attorney General at least 90 days prior to consummating the transaction. The written request must include a conversion plan, a plan for distributing proceeds of the conversion consistent with section 194-H and any other information reasonably necessary for the Attorney General to complete a review of the transaction. Failure to provide the information described in this subsection in a timely manner is sufficient grounds for the Attorney General to refuse to approve the transaction.

2. **ATTORNEY GENERAL APPROVAL.** The Attorney General shall approve a conversion transaction under subsection 1 if the Attorney General determines that the criteria set forth in section 194-G have been met. The Attorney General shall refuse to approve a transaction if the Attorney General reasonably believes that the fair market value of the transaction is \$ 500,000 or more.

3. **PUBLIC NOTICE.** Within 5 days of filing the request for approval under subsection 1, a public charity shall publish notice to the public of its intent to enter into a conversion transaction. Notice must be published once per week for 3 weeks in a newspaper of general circulation in the public charity's service area and must meet the following criteria.

A. A notice under this subsection must describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public and the proposed plan for utilizing the proceeds. The public notice must also provide information on opportunities for the public to provide comment on the proposal to the Attorney General.

B. A notice under this subsection must be published in languages other than English whenever a significant number or percentage of the population eligible to be served or likely to be directly affected by the service or purpose of the public charity needs information in a language other than English to communicate effectively. For the purposes of this paragraph, "significant number" is defined as 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected.

4. PUBLIC COMMENT. The Attorney General shall accept public comments regarding a proposed conversion transaction under this section for a 60-day period commencing the day that proper notice has been provided to the public of the proposed conversion.

5. PUBLIC HEARINGS. The Attorney General may hold public hearings if the Attorney General determines that a conversion transaction under this section is likely to cause a significant impact on access to services in the community served by the public charity.

6. PUBLIC RECORDS. All documents submitted to the Attorney General by a person filing a request under subsection 1 in connection with the Attorney General's review of a proposed conversion transaction are public records subject to Title 1, chapter 13, subchapter I except records made confidential by statute or privileged under the Maine Rules of Evidence.

7. ATTORNEY GENERAL REJECTION OF OR FAILURE TO ACT ON REQUEST FOR APPROVAL. If the Attorney General refuses to approve a conversion transaction under this section or fails to act on the request for approval within 90 days of receipt of the request, a public charity may request court approval of the transaction under section 194-F.

8. CONTRACTS WITH CONSULTANTS; REIMBURSEMENT FOR COSTS. To assist in the review of a proposed conversion transaction pursuant to this section, the Attorney General, at the Attorney General's sole discretion, may contract with experts or consultants the Attorney General considers appropriate.

A. Contract costs incurred by the Attorney General pursuant to this subsection may not exceed an amount that is reasonable and necessary to conduct the review of a proposed conversion transaction. A public charity filing a request under subsection 1 shall pay the Attorney General promptly upon request for all costs of contracts entered into by the Attorney General pursuant to this subsection but is not required to pay any amount that exceeds 5% of the fair market value of the assets to be converted.

B. The Attorney General is exempt from the provisions of applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this subsection.

§ 194-F. Court approval

1. FILING OF COURT ACTION. To obtain approval of a conversion transaction when the independent appraisal of the fair market value of the assets to be converted is \$ 500,000 or more, a public charity must file an action in Superior Court in the county in which the public charity's

service area is located or in Kennebec County. Concurrent with filing an action in Superior Court, a public charity must file with the court and the Attorney General a conversion plan and a plan for distributing proceeds of the conversion consistent with section 194-H. The Attorney General must be made a party to the action.

2. COURT ACTION. The court shall approve a proposed conversion transaction under subsection 1 if the court finds by a preponderance of the evidence that the criteria set forth in section 194-G have been satisfied. The court may deny approval of a conversion transaction or may approve the transaction with or without modifications or conditions. The court may require any entity that receives the assets of the public charity as a result of the conversion to report annually to the Attorney General and the public and may require the entity to submit to monitoring and oversight by the Attorney General.

3. PUBLIC NOTICE. Within 5 days of filing an action under subsection 1, a public charity shall publish notice to the public of its intent to enter into a conversion transaction. Notice must be published once per week for 3 weeks in a newspaper of general circulation in the charity's service area and must meet the following criteria.

A. A notice under this subsection must describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public and the proposed plan for utilizing the proceeds. The public notice must also include the court docket number and provide information on opportunities for the public to provide comment on the proposal to the Attorney General.

B. The notice must be published in languages other than English whenever a significant number or percentage of the population eligible to be served or likely to be directly affected by the service or purpose of the public charity needs information in a language other than English to communicate effectively. For purposes of this paragraph, "significant number" is defined as 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected.

4. PUBLIC ACCESS TO CONVERSION PLAN. The Attorney General shall make a conversion plan, the plan for distribution of proceeds, the valuation and any other documents filed under subsection 1 that are public records under Title 1, chapter 13, subchapter I and that are available electronically available for viewing on the Attorney General's publicly accessible site on the Internet as soon as feasible after the documents are filed with the Attorney General.

5. CONTRACTS WITH CONSULTANTS; REIMBURSEMENT FOR COSTS. To assist in the review of a proposed conversion transaction pursuant to this section, the Attorney General, at the Attorney General's sole discretion, may contract with experts or consultants the Attorney

General considers appropriate.

A. Contract costs incurred by the Attorney General pursuant to this subsection may not exceed an amount that is reasonable and necessary to conduct the review of the proposed conversion transaction. Costs must be approved in advance by the court. The public charity filing an action under subsection 1 shall pay the Attorney General promptly upon request for all costs of contracts entered into by the Attorney General and approved by the court pursuant to this subsection.

B. The Attorney General is exempt from the provisions of applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this subsection.

6. FILING WITH SECRETARY OF STATE. A public charity shall file a copy of the court's approval under this section with the Secretary of State.

§ 194-G. Review criteria

1. REQUIRED DETERMINATIONS. The Attorney General may not approve or recommend that a court approve and the court may not approve a proposed conversion transaction unless the Attorney General or the court, as appropriate, finds that:

A. The public charity will receive fair market value for its charitable assets. The fair market value must be based upon an appraisal conducted in accordance with subsection 3 and must use the projected closing date of the conversion transaction as the valuation date;

B. The proposed distribution of proceeds of the transaction complies with section 194-H; and

C. The public charity considered the proposed conversion as the best alternative in carrying out its mission and purposes.

2. CONSIDERATIONS. In determining whether the criteria in subsection 1 are met, the Attorney General or the court, as appropriate, shall consider, as applicable, whether:

A. The public charity will receive fair market value for its charitable assets;

B. The terms and conditions of the agreement or transaction are fair and reasonable to the public charity;

C. The fair market value of the public charity's assets to be transferred has been manipulated by the actions of the parties in a manner that causes the fair market value of the assets to

decrease;

D. The agreement or transaction will result in inurement to any private person or entity;

E. The proposed conversion transaction will result in a breach of fiduciary duty or violate any statutory or common-law duty or obligation on the part of the directors, trustees or other parties involved in the transaction, including but not limited to conflicts of interest related to payments or benefits to officers, directors, board members, executives and experts employed or retained by the parties;

F. The governing body of the public charity exercised due diligence in deciding to dispose of the public charity's assets, selecting the acquiring entity and negotiating the terms and conditions of the disposition;

G. The Attorney General has been provided with sufficient information and data by the public charity to evaluate adequately the agreement or transaction and the effects of the agreement or transaction on the public;

H. The proceeds of the conversion of the public charity are distributed to either an existing or new public benefit corporation or foundation pursuant to section 194-H;

I. The proceeds of the proposed conversion transaction will be used in accordance with the rules of any trust under which the assets were held by the public charity and the proceeds will be controlled as funds independent of the acquiring entity or entities related to the acquiring entity;

J. The entity surviving after the conversion transaction will be financially viable and competently managed;

K. The transaction will diminish the availability and accessibility of services to the affected community; and

L. The conversion plan and transaction complies with all applicable laws including the Maine Nonprofit Corporation Act and state tax code provisions.

3. VALUATION. A public charity shall submit to the Attorney General and the court an independent appraisal of the fair market value of assets to be converted under subsection 1. To the extent that the appraisal is based on a capitalization of the pro forma income of the converted assets, the appraisal must indicate the basis for determination of the income to be derived from any proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made regarding future earnings growth.

A. To the extent that an appraisal under this subsection is based on the comparison of the capital stock of the converted entity with outstanding capital stock of existing stock entities offering comparable products, the existing stock entities must be reasonably comparable to the converting entity in terms of such factors as size, market area, competitive conditions, profit history and expected future earnings.

B. If the value of assets being converted is \$ 500,000 or more, the appraisal must include any element of value arising from the accomplishment or expectation of the conversion transaction, including any value attributable to projected operating efficiencies to result from the conversion, net of the cost of changes to produce such efficiencies.

C. If the Attorney General or the court determines that an appraisal under this subsection is materially deficient or substantially incomplete, the Attorney General or the court may deem the entire conversion plan materially deficient or substantially incomplete and reject or decline to further process the application for conversion.

D. A converting entity shall submit to the Attorney General and the court information demonstrating to the satisfaction of the Attorney General or the court the independence and expertise of any person preparing the appraisal or related materials under this subsection.

E. An appraiser under this subsection may not serve as an underwriter or selling agent under the same conversion plan and an affiliate of an appraiser may not act as an underwriter or selling agent unless procedures are followed and representations and warranties made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way have an impact on the appraisal.

F. An appraiser may not receive any other fee except the fee for services rendered in connection with the appraisal.

§ 194-H. Distribution of proceeds

1. REQUIREMENTS. The proceeds of a conversion transaction must be distributed to an existing or new foundation or public benefit corporation that meets the following requirements.

A. The foundation or public benefit corporation must operate pursuant to [26 United States Code, Section 501\(c\)\(3\)](#) or [501\(c\)\(4\)](#), and, regardless of whether the foundation is classified as a private foundation under [26 United States Code, Section 509](#), the foundation or public benefit

corporation must operate in accordance with the restrictions and limitations that apply to private foundations found in 26 United States Code, Sections 4941 to 4945.

B. The foundation or public benefit corporation and its directors, officers and staff must be and remain independent of the for-profit company and its affiliates. A person who is an officer, director or staff member with influence over a conversion decision of a public charity submitting a conversion plan, at the time the plan is submitted or at the time of the conversion transaction or within 5 years thereafter, is not qualified to be an officer, director or staff member of the foundation. A director, officer, agent or employee of the public charity submitting the plan or the foundation receiving the charitable assets may not benefit directly or indirectly from the transaction.

C. A foundation or public benefit corporation must have or establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting the for-profit corporation or members of the board of directors and management of the for-profit corporation.

§ 194-I. Intervention in court proceeding

This section relates to intervention in proceedings under section 194-F.

1. **RIGHT TO INTERVENE.** Except as provided in subsection 2, the court, on timely application made pursuant to Rule 24(a) of the Maine Rules of Civil Procedure, shall allow any person who is interested in the outcome of a conversion proceeding to intervene as a party to that proceeding, notwithstanding the presence of the Attorney General in the action.

2. **COURT POWER TO MANAGE PROCESS.** This section does not limit the power of the court to manage its cases by limiting the number of intervenors or by consolidating parties with similar interests.

§ 194-J. Attorney General authority

1. **RULES.** The Attorney General may adopt rules the Attorney General considers appropriate to implement this section, sections 194-B to 194-I and section 194-K. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter II-A.

2. **ATTORNEY GENERAL AUTHORITY NOT LIMITED.** This section, sections 194-B to

194-I and section 194-K do not limit the common-law authority of the Attorney General to protect charitable trusts and charitable assets in this State. The penalties and remedies provided in section 194-K are in addition to and are not a replacement for any other civil or criminal action the Attorney General may take under common law or statute, including an action to rescind the conversion transaction or to obtain injunctive relief or a combination of injunctive relief and other remedies available under common law or statute.

§ 194-K. Penalties

1. ATTORNEY GENERAL TO BRING ACTION. The Attorney General may initiate an action in Superior Court to:

A. Void a conversion transaction pursuant to subsection 2. Such an action may be brought in Superior Court in Kennebec County or in the county in which the assets of the public charity to be transferred are located;

B. Seek a civil penalty against an individual pursuant to subsection 3. Such an action must be brought in the Superior Court of Kennebec County or in the county in which the individual resides; and

C. Obtain on behalf of the public charity the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Title 13-B standards.

2. TRANSACTION VOIDABLE. The Superior Court may void a conversion transaction entered into in violation of applicable provisions of sections 194-C to 194-H. If the court voids the transaction, it may also grant any orders necessary to restore the public charity to its former position, including removing the board of the public charity or voiding contracts.

3. PENALTIES AGAINST INDIVIDUALS. An individual officer, director, trustee or manager in a position to exercise substantial influence over the affairs of a public charity is subject to a civil penalty if that person, in violation of the standards established under Title 13-B for conduct by directors or officers or for avoiding conflicts of interest:

A. Receives property or consideration from the public charity that constitutes private inurement; or

B. Receives excess benefits that exceed the fair market value of anything provided in return.

The civil penalty under this subsection may be an amount up to 100% of the excess benefit or private inurement received and may be recovered in addition to costs and fees incurred by the Attorney General in bringing the action.

[Ohio's "all charities" conversion statute is below – much less elaborate than Maine's, and separate from the health care conversion statute; included in the nonprofit corporations part of the Code.]

§ 1702.39. Sale or other disposition of assets

(A) (1) [deals with mutual benefit corporations]

(B) (1) A public benefit corporation may not dispose of its assets with value equal to more than fifty per cent of the fair market value of the net tangible and intangible assets, including goodwill, of the corporation over a period of thirty-six consecutive months in a transaction or series of transactions, including the lease, sale, exchange, transfer, or other disposition of those assets, that are outside the ordinary course of its business or that are not in accordance with the purpose or purposes for which the corporation was organized, as set forth in its articles or the terms of any trust on which the corporation holds such assets, unless one or more of the following apply:

(a) The transaction has received the prior approval of the court of common pleas of the county in this state in which the principal office of the corporation is located, in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding, and in which proceeding the attorney general may intervene as of right.

(b) (i) The corporation has provided written notice of the proposed transaction, including a copy or summary of the terms of such transaction, at least twenty days before consummation of the lease, sale, exchange, transfer, or other disposition of the assets, to the attorney general's charitable law section and to the members of the corporation, and the proposed transaction has been approved by the voting members present in person, by the use of authorized communications equipment, by mail, or, if permitted, by proxy at a meeting held for that purpose, by the affirmative vote of a majority of the voting members present as described in this division, if a quorum is present, or, if the articles or regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and if the articles or regulations require, by the affirmative vote of the voting members of any particular class.

(ii) For purposes of division (B)(1)(b)(i) of this section, participation by a voting member at a meeting through the use of any of the means of communication described in that division constitutes presence in person of that voting member at the meeting for purposes of determining a quorum.

(c) The transaction is in accordance with the purpose or purposes for which the corporation was organized, as set forth in its articles or the terms of any trust on which the corporation holds the assets, and the lessee, purchaser, or transferee of the assets is also a public benefit corporation or a foreign corporation that would qualify under the Revised Code as a public benefit corporation.

(2) The attorney general may require, pursuant to [section 109.24 of the Revised Code](#), the production of the documents necessary for review of a proposed transaction under division (B)(1) of this section. The attorney general may retain, at the expense of the public benefit corporation, one or more experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, that the attorney general considers reasonably necessary to provide assistance in reviewing a proposed transaction under division (B)(1) of this section.

(C) The attorney general may institute a civil action to enforce the requirements of division (B)(1) of this section in the court of common pleas of the county in this state in which the principal office of the corporation is located or in the Franklin county court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies.

(D) The corporation by its directors may abandon the proposed lease, sale, exchange, transfer, or other disposition of the assets of the corporation pursuant to division (A) or (B) of this section, subject to the contract rights of other persons, if that power of abandonment is conferred upon the directors either by the terms of the transaction or by the same vote of voting members and at the same meeting of members as that referred to in division (A) or (B) of this section, as applicable, or at any subsequent meeting.

(E) An action to set aside a conveyance by a corporation, on the ground that any section of the Revised Code applicable to the lease, sale, exchange, transfer, or other disposition of the assets of such corporation has not been complied with, shall be brought within one year after that transaction, or the action shall be forever barred.

