

Email from James LoPrete, December 2005

Your e-mail of October 31 came in while I was extremely busy with other matters. I can now reply and hope it isn't too late. When I say "I", that would include most of my donors.

Section 2(3) - Definition of Gift Instrument

I agree with the Commissioner who suggested that later solicitations should be considered gift instruments.

Section 4(a) - Spending

I really don't care as long as it is clear that expressed donor intent controls and trumps anything the donee charity could do.

Section 4(b) - Retroactive Application

Same position as 4(a).

Section 4(c) - Presumption of Imprudence

It should be in the act. I would agree to an exception for (i) special purpose funds where everything (i.e. full amount of gift) is to be expended for that purpose; and (ii) where the fund is for a limited time and everything is to be expended within that time frame.

Section 4(d) - Notifying Attorney General

I still believe notifying most attorney generals, except in "politically sensitive cases" is meaningless. Notifying the guy in the charities back yard would be even less effective.

I still strongly believe that where a donor or small numbers of donors create a perpetual fund and one or more of them are still around (particularly foundations - family or otherwise) the donors are the ones who should be notified. The date chosen for applying the amount to be spent should be (in this order):

1. The date specified by the donor, or if none;
2. The date initially selected by the charity and then consistently applied.

Section 6 - Modification

I vehemently disagree. Your statement about "Trust law does not" is not the law in all jurisdictions. I represent foundation donors who are interested and should have the legal right to be notified and be an interested party in any attempted modification. These foundations will be around for more than 20 years.

Other Issues

A. - Coverage

It should apply to “operating” charitable trusts. If all the trust does is pay out funds to other charities, they should be excluded whether the trustee is a corporation or an individual. It’s the “function”, not the nature of the trustee which should control.

B. - Accounting Rules

You are giving too much deference to the CPA’s. Their rules cannot be contrary to what the law requires. They are already in plenty of hot water over their rules and how they helped with ENRON, Worldcom, etc. situations. They better adjust to the law.

C. - Donor Standing

This, to me at least, is the most important issue. The donor should have standing. Relying on charities “enlightened self-interest” or some politician (attorney general, county counsel) is no real world protection to donors.

My email address has changed. My new address is mfreeman@monaghanpc.com.