

273.400 Definition -- Internal Revenue Code -- Acts prohibited -- Policy of state regarding charitable trust -- Liability of trustee -- Powers of Attorney General.

Notwithstanding any other provisions of this chapter:

- (1) "Internal Revenue Code" as used in this section means the Internal Revenue Code of 1954, in effect on January 1, 1970, including all appropriate provisions of the Tax Reform Act of 1969 at the date specified in that law, exclusive of any amendments made subsequent to December 31, 1969.
- (2) No corporation which is a "private foundation" as defined in Section 509 of the Internal Revenue Code shall:
 - (a) Engage in any act of "self-dealing" (as defined in Section 4941(d) of the Internal Revenue Code) which would give rise to any liability for any tax imposed by Section 4941 of the Internal Revenue Code;
 - (b) Retain any "excess business holdings" (as defined in Section 4943(c) of the Internal Revenue Code) which would give rise to any liability for any tax imposed by Section 4943 of the Internal Revenue Code;
 - (c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of Section 4944 of the Internal Revenue Code, so as to give rise to any liability for any tax imposed by Section 4944 of the Internal Revenue Code;
 - (d) Make any "taxable expenditures" (as defined in Section 4945(d) of the Internal Revenue Code) which would give rise to any liability for any tax imposed by Section 4945 of the Internal Revenue Code.
- (3) Each corporation which is a "private foundation" as defined in Section 509 of the Internal Revenue Code shall, for the purposes specified in its articles, distribute at such time and in such manner, for each taxable year, amounts at least sufficient to avoid liability for any tax imposed by Section 4942 of the Internal Revenue Code.
- (4) Subsections (2) and (3) of this section express the continuing policy of this state with respect to charitable trust interests and are enacted to assist corporations which are "private foundations" as defined in Section 509 of the Internal Revenue Code in maintaining various tax benefits extended to them, and shall apply to any corporations described therein; provided, however, subsections (2) and (3) of this section shall not apply to a corporation in existence on July 1, 1972 to the extent that such corporation shall provide to the contrary by amendment to its articles of incorporation adopted after July 1, 1972.
- (5) Violation of a provision of subsection (2) or (3) of this section by a corporation to which said provisions are applicable shall not work a forfeiture or dissolution of the corporation. No trustee, director or officer of a corporation to which the provisions of subsection (2) or (3) of this section are applicable shall be personally liable for a violation of a prohibition or requirement of said provisions unless he participated in such violation knowing that it was a violation, nor shall such trustee, director or officer be personally liable if such violation was not willful and was due to reasonable cause; provided, however, that this subsection does not exonerate a trustee, director or officer from any

responsibility or liability to which he is subject under any other rule of law, whether or not duplicated in subsection (2) or (3) of this section.

- (6) Except as provided in subsection (5) of this section, nothing in this section shall impair the rights and powers of the courts or the Attorney General of this state with respect to any such corporation.
- (7) In furtherance of the continuing policy of this state to assist charitable trust interests in maintaining various tax benefits extended to them, the provisions of subsections (2) and (3) of this section shall be deemed to have been in force and effect on January 1, 1970; provided, however, the provisions of subsections (2) and (3) of this section shall apply to a corporation organized before January 1, 1970 which is a "private foundation" as defined in Section 509 of the Internal Revenue Code only on and after the first day of its first taxable year (for federal tax purposes) beginning on or after January 1, 1972.

History: Created 1972 Ky. Acts ch. 344, sec. 4.