

§8.31 The Franklin Trust (Boston)

[Excerpted from Loring and Rounds: A Trustee's Handbook (2012), pages 1172-1174]

Benjamin Franklin died on April 17, 1790. Two trusts were established under his will, one sited in Pennsylvania and the other in Massachusetts. The latter, at its inception, was funded with 1,000 pounds sterling. The City of Boston came to be its trustee. The Franklin Foundation, pursuant to a statute enacted in the early 1900s, came to be agent for the trustee with exclusive authority over the trust's administration.

Under the terms of the trust, income was to accumulate for 200 years. At the end of the first 100 years, three-quarters of the principal was to be carved out for "public" works "which may be judged of most utility" to the inhabitants of Boston. At the end of the second 100-year period (June 30, 1991), Boston was to have a right of disposition over one-fourth of the balance of the trust estate and the Commonwealth of Massachusetts over three-fourths. The will provided that trust assets were to be invested in low interest loans to "young married artificers...as have served an Apprenticeship" in Boston.

When the first 100 years were up, the time came for the fund managers to carve out the portion specified under the terms of the will, about \$400,000 worth of property. There were many suggestions as to what should be done with the distribution, including the following: that it should be applied to reduce Boston's debt, that it should go toward the construction of a public bath house, and that it should be used to build a recreation hall in the Boston Public Gardens. In 1904, Andrew Carnegie intervened at the request of Henry S. Pritchett, president of MIT. Carnegie offered to match the distribution on two conditions: (1) that the amount, together with his contribution, be used for "the establishment of a school for the industrial training of men and women along the lines of The Mechanics and Tradesmen's School of New York and the Cooper Union" and (2) that Boston furnish the land on which the school would be built.

In October 1904, Carnegie wrote to the fund managers: I am trustee of both schools mentioned [The Mechanics' and Tradesmen's School of New York and Cooper Union] and do not hesitate to say that to the best of my knowledge no money has produced more valuable results. I think it is from the class who not only spend laborious days but also spend laborious nights fitting themselves for hard work that the most valuable citizens are to come. We are here helping only those who show an intense desire, and strong determination, to help themselves—the only class worth helping, the only class that it is possible to help to any great extent.

There was initially some resistance to Carnegie's condition that Boston supply the land. In 1904, however, just before Christmas, Mr. Carnegie dashed off the following note to Mayor Patrick Collins:

Now then, my idea was that the city of Boston should cooperate with The Franklin Fund and with my contribution. Frankly, I should not like to give aid to a city that would remain apart and do nothing. If the growing city of Boston, with such a mayor, cannot give a site for The Franklin School, it must fall somewhat from the pinnacle I have it upon. We

expect great things from Boston...you may have noticed that I rarely give anything for nothing...think it all over, and I believe you will see that on no consideration must Boston be left out.

In July 1905, Mayor Collins wrote to Mr. Carnegie, who was vacationing in Scotland:

On behalf of the managers of The Franklin Fund, I have the honor to report that all the conditions governing your proposed contribution have been complied with.

Shortly thereafter, the city treasurer received, as promised, Carnegie's matching gift in the form of \$408,000 in U.S steel bonds and a personal check for \$398.48. The Franklin Institute of Boston was born. In 1958, the legislature passed and the Governor signed into law a statute that purported to exercise the Commonwealth's right of disposition over the balance of the fund for the benefit of the Institute. There was a comparable section covering Boston's portion that had the approval of the mayor and the city council.

In 1959, the Institute filed in state court an equity petition seeking acceleration of the trust's termination date. The court denied the request but in so doing, left the fate of the statute up in the air.²⁷ Thirty or so years later, on the eve of the expiration of the 200-year period, The Franklin Foundation filed a complaint for instructions seeking a judicial determination as to whether the statute would be operative were it not repealed before June 30, 1991.

The Massachusetts Attorney General declined to defend the statute and his division of public charities declined to represent the Institute (itself a public charity). The Foundation, which had management responsibilities not only for the trust fund but also for the Institute, took it upon itself to retain independent counsel to represent the interests of the Institute in the matter. Boston, which was trustee of the Institute as well as the trust fund, also declined to defend the interests of the Institute.

In 1993, the court rendered its decision: The statute was inoperative. Additional legislation would be required if Boston and the Commonwealth were effectively to exercise their respective rights of disposition over the trust property, which by then had grown in value to \$5 million.²⁸ Immediately, the governor, members of the legislature, and a number of others outside the Massachusetts state government rallied to the cause of the Institute. A bill was filed that were it to become law would effect an exercise of the Commonwealth's right of disposition in favor of the Institute. In January 1994, the Institute won the war when the governor signed into law legislation impressing a further trust on its portion of the fund for the benefit of the Institute. Shortly thereafter, the city council and the mayor followed suit with respect to Boston's portion.

²⁷The Franklin Inst. v. Attorney Gen., 340 Mass. 197, 163 N.E.2d 662 (1961).

²⁸Franklin Found. v. Attorney Gen., 416 Mass. 483, 623 N.E.2d 1109 (1993).