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## CORPORATIONS-VOTING TRUST AGREEMENTS - EXTENSIONS BEYOND STATUTORY LIMIT

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CORPORATIONS — VOTING TRUST AGREEMENTS — EXTENSIONS BEYOND STATUTORY LIMIT — A voting trust agreement provided that the trust should continue for ten years from the date thereof, and authorized the trustees at the expiration of such term to renew the agreement for a further term. *Held*, that under the New York statute<sup>1</sup> limiting voting trusts to ten years the agreement was valid for such period, but the provision authorizing renewal was invalid. *Kittinger v. Churchill Evangelistic Ass'n*, 151 Misc. 350, 271 N. Y. S. 510 (1934).

Many states have statutes specifically authorizing voting trust agreements<sup>2</sup> limited to a certain period, usually ten years.<sup>3</sup> Such a time limit is justified in that the purpose of such trusts to secure a favorable management and a continuing policy<sup>4</sup> is usually adequately fulfilled within such period.<sup>5</sup> Practically no management continues intact for ten years. A court faced with an agreement authorizing renewal after the statutory period might conceivably decide any one

<sup>1</sup> N. Y. Laws of 1925, c. 120, amending sec. 50 of the Stock Corporation Law provides: "A stockholder, by agreement in writing, may transfer his stock to a voting trustee or trustees for the purpose of conferring the right to vote thereon for a period not exceeding ten years upon the terms and conditions therein stated."

<sup>2</sup> Colorado, Laws 1931, c. 70, sec. 28, p. 253; Delaware Laws of 1925, c. 112, sec. 6, p. 277; Ohio, Ann. Code (Page, 1932 Supp.), sec. 8623-34; New York, Laws of 1925, c. 120, amending sec. 50 of the Stock Corporation Law, n. 1; Michigan, Pub. Acts 1931, no. 327, sec. 34, p. 580, amended by Pub. Acts 1933, no. 186; New Hampshire, Laws 1931, c. 104, sec. 2, p. 117; New Jersey, Laws 1926, c. 318, p. 531, N. J. Comp. Stat. (Supp. 1925-1930), sec. 47-17; Maryland, Ann. Code (Bagby, 1924), art. 23, sec. 133; Nevada, Comp. Laws (Hillyer, 1929), sec. 1714.

<sup>3</sup> All the statutes cited in note 2, *supra*, have a ten-year limit, with the sole exception of Maryland where the term is five years.

<sup>4</sup> Wormser, "Corporate Voting Trusts," 18 COL. L. REV. 123 (1918); Finkelstein, "Voting Trust Agreements," 24 MICH. L. REV. 344 (1926).

<sup>5</sup> The prior New York statute limiting the period to five years was changed to ten because the shorter period was too brief to serve the purpose for which voting trusts are devised. Finkelstein, "Voting Trust Agreements," 24 MICH. L. REV. 344 at 364 (1926).

of four ways. First, it might decide that the whole voting trust is invalid because the renewal provision violates the statute. But such result would depend on whether the illegal provision is severable and goes to the essence of the contract<sup>6</sup> regardless of the usual provision in voting trusts<sup>7</sup> that the invalidity of a part shall not invalidate the whole. Second, it could decide that the trust is good by statute for the statutory period but thereafter its validity depends on common law.<sup>8</sup> But this result is difficult if no voting trust not within the terms of the statute is considered legal.<sup>9</sup> Third, the renewal provision could be held not to violate the statutory limitation as it is a new trust. But this seems to overlook the realities of the situation. Fourth, as in the instant case, the court could hold that the trust is valid for the statutory period but that the renewal provision is invalid. Thus this decision should be a warning to lawyers in drafting voting trust agreements under statutes, for renewal provisions are quite common; and even though phrased guardedly "if lawful,"<sup>10</sup> it would be wiser to omit such provisions entirely and provide that at any event the trust shall terminate at the end of the statutory period.

G. W. D.

<sup>6</sup> For the effect of partial illegality in contracts generally, see 3 WILLISTON, CONTRACTS, secs. 1782, 1779 (1931); 33 MICH. L. REV. 278 (1934); as applied to voting trust agreements, see 14 C. J. 915.

<sup>7</sup> E.g., "The invalidity of any terms or provision of this agreement shall not affect the validity of the remainder of this agreement."

<sup>8</sup> This result is argued for in 25 COL. L. REV. 951 at 955 (1925).

<sup>9</sup> As was decided in *In re Morse*, 247 N. Y. 290, 160 N. E. 374 (1928).

<sup>10</sup> E.g., "The voting trustees may, in their discretion, if the same shall be lawful by the laws of the state under which the corporation is incorporated, extend the date of termination of this agreement."