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Trust Company in Michigan

Ralph Stone

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THE TRUST COMPANY IN MICHIGAN.*

A TRUST COMPANY in Michigan is a financial and business institution. It came into being, in this state as elsewhere, in response to the need for an efficient and business-like organization to administer estates and trusts of all kinds as a relief to the individual executor, administrator and trustee. The ever-increasing complications of business and finance placed a burden upon the individual—the relative, the friend, or the business associate—which he found he could not carry without considerable sacrifice either to his own interests or to those of the trust. Those who create trusts either by will, or private agreement, or otherwise, have come to feel that it is not just to place such heavy responsibilities upon their relatives and business associates, and likewise to realize that their trust duties could not be properly discharged without subjecting them to serious inconvenience and probable loss in the handling of their own personal affairs. The feeling has also become quite general that business and investment problems are nowadays of such a character as to require specially trained service to handle them properly, and that it is neither wise nor right to leave their solution to wives, daughters, sons or others, not equipped by experience or training to solve them.

The Trust Company is a modern organization. It has developed mostly during the past thirty years. Although individual companies were chartered as long ago as one in New York in 1822, another in that city in 1830, and two in Philadelphia in 1836, all of which are still in existence—yet the development of “the trust company idea,” as it is known at present, did not commence until about the time the trust-company act was passed in Michigan, in 1889.

Trust Companies vary somewhat in the character of the business which they transact. The development of the purely trust business—the acting in various fiduciary capacities—is a slow process, and it is not very profitable. This has led to greater emphasis being placed upon the building up of the financial or quasi-banking department of the business. Thus it is that in most sections of the country, trust companies are looked upon as banks and perform banking functions,

* That there is a necessary conflict of interests between lawyers and trust companies the MICHIGAN LAW REVIEW does not believe. We are glad to publish this paper by the President of the Detroit Trust Company.—Ed.

while the trust department is regarded as an incidental branch of their business. In fact, there are many trust companies so-called which are not trust companies at all, but transact only a banking business, both commercial and savings. In Michigan, however, more so perhaps than in any other state, they are rather closely limited to purely trust business.

Trust Company Resources. According to the latest available compilation (June 30, 1919) the Trust Companies of the United States, about 2,250 in number, have total resources of about \$12,500,000,000, and total Capital, Surplus, and Undivided Profits of about \$1,550,000,000.

In Michigan, the emphasis having been placed, by law, upon the trust business, and the quasi-banking powers restricted, naturally the trust companies are few in number and small in total resources.

There are only eleven trust companies in Michigan, with a total Capital at this time of \$6,337,020, and total Capital, Surplus and Undivided Profits of about \$12,800,000, and total Resources of about \$40,000,000.

Trust Departments of National Banks. There is another form of organization for corporate trust service which has recently come into existence—the Trust Departments of National Banks. Such departments are authorized by the Federal Reserve Act, and may be established by application to the Federal Reserve Board and the issuing of a permit by that Board.

Under the Act, National Banks may exercise any or all of the powers of trustee, executor, administrator, registrar of estates of lunatics or in any other fiduciary capacity in which state banks, trust companies or other corporations which come into competition with National banks are permitted to act under the laws of the state in which the National bank is located.

National banks exercising any or all of these powers are obliged to segregate all assets held in any fiduciary capacity from the general assets of the bank, and to keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of the Act. This is already the practice of trust companies in Michigan and elsewhere. These books and records are open to inspection by the Commissioner of the State Banking Department to the same extent as those of trust companies. National banks can-

not carry in their trust departments current funds subject to check, or receive deposit of checks, drafts, bills of exchange or other items for collection or exchange purposes. The bank is required to set aside in the trust department United States bonds or other securities approved by the Federal Reserve Board, for funds received in trust awaiting investment, before it can use such funds in the conduct of its business. If the bank fails, the owners of those funds have a lien on the bonds or other securities so set apart in addition to their claim against the bank. National banks must also make the deposit with the State Treasurer required of trust companies for protection of trust creditors.

Before issuing the permit to the bank to exercise these trust powers, the Federal Reserve Board may take into consideration the amount of capital and surplus of the bank and whether or not it is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts that seem to it proper. The Board, however, cannot issue a permit to a bank which has a capital less than that required by the state law for trust companies.

The Board has also issued regulations governing the conduct of the trust department. These regulations provide that the bank shall establish a separate trust department and place it under the management of officers whose duties shall be prescribed by the Board of Directors of the bank; that investments held in each trust shall be kept separate from the other; and that the securities must be placed in the joint custody of two or more bonded officers or other employees designated by the Directors of the bank. The regulations also prescribe the manner in which trust funds shall be invested and the investments approved. The trust department is subject to examination by examiners appointed by the Comptroller of the Currency. The Federal Reserve Board reserves the right to revoke permits to exercise trust powers.

Permits have been granted up to April 1, 1921, to twenty-seven National banks in Michigan, but only a portion of them have established trust departments. The capital of these banks to which the permits have been granted aggregates \$8,355,000; Capital, Surplus and Undivided Profits about \$17,000,000; and total resources, all of which is employed in the banking department, about \$162,000,000.

There are 111 National banks in the state of Michigan and it will be noted that permits have been granted to, and trust departments

established by, only a small proportion of them. The reasons for this are that in this state, trust companies do not enter into competition with the banks; that the capital requirements for trust companies, which must be met by National Banks desiring to establish trust departments, are largely in excess of the capitalization of most National banks; that the directors of National banks have hesitated to subject the bank to the infinite variety of liabilities involved in the relation of trustee, against which the bank would be obliged to protect itself by the employment of officers and employees of special training and experience in this kind of business; that transaction of trust business places an additional burden of management upon the shoulders of directors and officers; and that the officers and directors of National banks are in doubt as to whether trust departments in the smaller towns or cities would yield earnings or revenue sufficient to make their operation profitable.

I. HOW THE TRUST COMPANY IS ORGANIZED AND OPERATES.

The Trust Company Act. Trust Companies in Michigan are organized under Act 108 Public Acts of 1889, and the first trust company in the state was incorporated during that year. The Act contains the customary provisions covering the formalities of organization common to corporations generally. The requirements and features of the act which relate particularly to the trust company, and which fix the character of its business, and prescribe its powers and limitations, are as follows:

The required amount of capital stock is fixed by the law and graded according to the population of the city in which it is located, with a minimum of \$150,000 and a maximum of \$5,000,000. Not less than fifty per cent of its capital, nor more than \$200,000 in specified securities, must be deposited with the State Treasurer as security for the depositors and creditors of the company.

Its powers are as follows:

To take, receive and hold and repay, re-convey and dispose of any effects and property, both real and personal, which may be granted, committed, transferred or conveyed to it, with its consent, upon any terms, or upon any trust or trusts whatsoever at any time or times, by any person or persons, including

married women and minors, body or bodies corporate, or by any court, including the federal courts, in the State of Michigan.

To take and accept by grant, assignment, purchase, transfer, devise or bequest and hold any real or personal estate in trust in pursuance of the directions of any trust created in accordance with the laws of this state or of the United States.

To act as agent or attorney for the transaction of business, the management of estates, the collection of rents, interest, dividends, mortgages, bonds, bills, notes and securities.

To act as agent for the purpose of issuing, negotiating, registering, transferring or countersigning certificates of stock, bonds or other obligations.

To manage sinking funds of corporations and municipalities.

To act as executor, administrator, trustee, receiver, assignee, and guardian of minors, incompetent persons, lunatics or any persons subject to guardianship.

To loan money upon real estate and collateral security.

To execute and issue its notes and debentures payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor.

To receive on deposit for safekeeping and storage gold and silverplate, jewelry, money, stocks, securities and other valuable personal property, and to rent safes therefor.

To become sureties for administrators, guardians or other trustees or persons.

To guarantee or insure to grantees the validity of titles in real estate transfers.

The Act provides that nothing contained in it shall be construed as giving the trust company the right to issue bills to circulate as money, buy or sell bank exchange, or do a general banking business.

In case of appointment of the trust company by any court, the company shall not be required to give any security except in the discretion of the court, other than the deposit with the State Treasurer already mentioned. The deposit with the State Treasurer must be invested by the company in real estate mortgages or U. S. Government or certain specified state and municipal bonds. The balance of its funds may be invested in real estate mortgages, government,

state or municipal bonds, or in such real or personal securities as the directors of the company may deem proper.

The company shall keep on hand funds in an amount equal to at least twenty per cent of its matured obligations and money due and payable, three-fourths of which reserve may be kept in any bank or trust company approved by the Commissioner of the Banking Department.

The foregoing are the salient points in the Act, the remainder of the provisions relating to such matters as meetings of stockholders, examination by the Commissioner of the State Banking Department, penalties for violation of the Act, proceedings as to the winding up of the company, et cetera.

Typical Form of Organization. Under the powers thus granted by the law, and as the result of about thirty years' experience, the trust company in Michigan has developed a form of organization for the efficient handling of its business which has become somewhat standard in its character. While not precisely uniform in all companies, its general features are the same. It is departmental in character, and in general these departments are as follows:

Trust Department.
Financial Department.
Bond Department.

There are other departments which individual trust companies have established, not common to all trust companies in the state, viz:

Safety Deposit Department.
Public Accounting Department.
Abstract Department, including guaranteeing of titles.

So far as the writer knows, no trust company has established a Surety Bond Department, this probably being due to the fact that directors of trust companies are of the opinion that the liability involved in the relation of surety upon bonds is of such character and extent that it would drive away rather than attract trust business.

Each of the foregoing departments, common to most trust companies in Michigan—Trust, Financial and Bond—is ordinarily in charge of a Vice-President of the company, the President having general supervision of all of them. The title of each department indicates its jurisdiction. How it serves the public and the lawyer will be discussed later on.

The by-laws of most trust companies in Michigan provide for an Executive Committee selected from the Board of Directors, this Committee meeting more frequently than the Board, keeping more closely in touch with the business of the Company, authorizing the making of loans and trust investments and passing upon the more difficult and intricate problems which arise in the operation of the various departments.

The Trust Department, having the greater variety of business and problems to handle, requires a larger and more expensive organization than either of the other departments. Generally the Secretary, Assistant Secretaries and a Trust Officer assist in the management of this department, aided by employees especially trained in the handling of real estate, in fire, marine and other kinds of insurance, in taxation, in the collection and analysis of business and corporate statistics, in business questions which arise in the operation and liquidation of industrial and other concerns, in accounting and book-keeping, et cetera.

In some cases the volume and extent of the corporation business transacted through the Trust Department require the services of an additional Vice-President of special ability and experience in the operation of receiverships and supervision of industrial and other corporations in which estates or trusts have a controlling interest, and oversight of the discharge of the duties of the trust company as trustee under mortgages securing large issues of bonds, involving technical knowledge of certain lines of business.

The Vice-President in charge of the Financial Department, as a rule, has the assistance of the Treasurer and Assistant Treasurers.

The organization of the Bond Department in charge of another Vice-President who manages it, includes experts in the buying of securities of all kinds, a manager of sales, and a force of salesmen.

Because of the variety and extent of detail involved in the trust, financial and investment business, a considerable force of specially trained clerks as well as bookkeepers, stenographers, et cetera, is required, and these complete the organization of a typical trust company in Michigan.

II. HOW IT SERVES THE PUBLIC AND THE LAWYER.

Trust companies are a public-serving institution. They were formed to meet a strong public need. Millions of dollars have been

invested in their stock, and billions of dollars of trust funds and property are being administered by them for individuals and charitable organizations who are the beneficiaries. They represent the highest type of modern fiduciary, and they have operated so efficiently and economically that their permanency is a settled fact. They are rapidly succeeding individuals as a modern agency for the management of property. As such, therefore, they are becoming recognized, in proportion as their proper functions are becoming more clearly understood, as a substantial aid to the legal profession in the discharge of their own particular duties to the community.

Therefore, the best interests of the public, as well as those of the legal profession and the trust company, are promoted by co-operation and mutual helpfulness. In some parts of the country where these things have not been clearly perceived, there has been a feeling on the part of the lawyer that trust companies, by advertising to draw wills and to render service generally accepted as legal in its nature, have not kept strictly within their natural field of operations. As a result of careful consideration of this subject among themselves, trust companies have discontinued these practices, and generally throughout the country are now conducting their business along lines which meet with the endorsement of the legal profession.

It is now being realized more and more that the accumulated experience of trust companies proves of valuable assistance to attorneys. As a result of extended experience, the trained officers of trust companies have had opportunities to observe the operation of trusts under a great variety of circumstances. They have encountered and solved the most diverse problems raised by directions by testators with reference to family affairs, education and maintenance of children; investment of funds, operation of businesses, et cetera. That accumulated experience, and the lessons drawn from it, have been made available to lawyers and found by them a valuable guide in advising their clients in respect to fiduciary and business matters, and in the preparation of wills. This has been especially true with respect to trust clauses, and deeds of trust.

By advertising through periodicals, newspapers, letters, booklets, et cetera, trust companies are educating the people of their communities to create trusts, and this means the drawing of wills, deeds and other instruments by lawyers.

In all communities there are many cases where men have either

failed to make wills, or by a simple form of will, have left property to wives inexperienced in business, or minor children, or sons and daughters of immature experience, with the inevitable result of waste, loss and suffering. Trust companies have, at considerable expense, pointed the way and afforded the means of avoiding these losses by stimulating the creation of trusts under wills—and likewise by trust deeds executed during the maker's life—under which property is safeguarded, family interests protected, wives, sons and daughters educated in the proper use of money, and loss and suffering avoided. These forms of wills and trust deeds must be drawn with great care in order to be effective and properly serve the maker's purpose, and their preparation calls for legal knowledge of high order. The development of the trust company, and its education of the public through advertising, and otherwise, has led and will increasingly lead to a greatly increased demand upon attorneys for necessary legal service of this important character—a service which is of incalculable benefit to their clients.

As stated heretofore, the trust company is essentially a business and investment institution, and as such serves the lawyer in many ways. The business of the one and the profession of the other are in reality co-operative and mutually helpful. In its capacity as a public-serving corporation, the trust company offers to the lawyer the facilities of its trust and bond departments in a manner which enables the lawyer to serve his client with greater efficiency and satisfaction to both.

From the trust company's experience in investment problems, it aids the lawyer, through its bond department:

In passing upon the great number and variety of stocks and bonds offered to his clients;

In reporting the market value of securities;

In furnishing information as to rights to subscribe to, or conversion privileges attaching to, stocks and bonds;

As to sinking fund provisions;

In furnishing of financial statistical information;

In supplying information respecting the various issues of Liberty and other Government bonds, as well as municipal, public utility, industrial, and other bonds; and in many other ways.

Through its trust department, the trust company is of valuable assistance to lawyers:

By furnishing them with data and information as to the results of operation under typical trust clauses in wills and deeds of trust;

With reference to safeguarding and placing limitations upon investment of trust funds;

In the framing of provisions for directing disbursements of proper character for the protection of trust property;

In preparing the directions for the handling of amortization of premiums paid for securities and discounts, with reference to the rights of life-tenant and remainderman;

In stating the limitations upon the powers of trustee that may be advisable, and such as are practically enforceable;

In the determination of difficult questions of accounting, particularly where the interests of life-tenant and remainderman are involved;

In giving the lawyer the benefit of its experience, through its officers and specially trained employees, in the handling of real estate belonging to its trusts, and problems relating to fire, marine and other kinds of insurance, in taxation, in business questions arising in the operation and liquidation of industrial and other concerns, and in many other trust and fiduciary relations, as trustee under mortgage, registrar and transfer agent, et cetera.

Trust companies have consistently maintained an attitude of helpfulness to the legal profession in all these respects, and out of this cooperation has grown a service to the public which has amply justified the policy of co-operation between these two great public-serving agencies and professions.

RALPH STONE.

Detroit, Michigan.