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CORPORATIONS-ULTRA VIRES ACTS-GIFTS TO EDUCATIONAL INSTITUTIONS

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CORPORATIONS—ULTRA VIRES ACTS—GIFTS TO EDUCATIONAL INSTITUTIONS—Plaintiff, a New Jersey corporation, was engaged in the manufacture and sale of valves, fire hydrants and other special equipment for use in water and gas industries. The company employed about 300 persons at its plant in New Jersey. In 1951 the board of directors adopted a resolution appropriating \$1,500 as a donation to Princeton University for university maintenance. When this appropriation was questioned by certain stockholders, the company instituted a declaratory judgment action to determine whether the proposed donation was ultra vires. The lower court ruled that the donation was intra vires.¹ On appeal, *held*, affirmed. The gift was intra vires because it benefited the corporate donor and was authorized by statute.² *A. P. Smith Mfg. Co. v. Barlow*, (N.J. 1953) 98 A. (2d) 581, app. dismissed 346 U.S. 861, 74 S.Ct. 107 (1953).

The principal case represents the only adjudication in recent years of the validity of corporate gifts to educational institutions. However, because of the doctrine of personal liability of corporate directors for ultra vires acts,³ the question of the validity of these gifts presents a problem on which inept legal counsel may bring financial disaster to a corporate director. The limitation imposed by the common law on corporate donations to charitable institutions is that the donation must benefit or promote the corporate purpose.⁴ Prior to the principal case it was held that a corporate gift to an educational institution is within the common law limitation when the gift will both

¹ *A. P. Smith Mfg. Co. v. Barlow*, 26 N.J. Super. 106, 97 A. (2d) 186 (1953).

² N.J. Rev. Stat. (1937) §14:3-13 provides: "Any corporation . . . may co-operate . . . in the creation and maintenance of community funds or of charitable, philanthropic or benevolent instrumentalities conducive to public welfare, and its directors or trustees may appropriate and expend for these purposes such sum or sums as they deem expedient and as in their judgment will contribute to the protection of the corporate interests." The statute limits the expenditure by providing that if an expenditure of 1% of the capital and surplus as of the end of the preceding year is made, no further expenditure can be made when 25% of the stockholders object upon notice of the director's intention to make further expenditures.

³ STEVENS, CORPORATIONS, 2d ed., 723-724 (1949); *Fergus Falls Woolen Mills Co. v. Boyum*, 136 Minn. 411, 162 N.W. 516 (1917); BALLANTINE, CORPORATIONS, rev. ed., §65 (1946).

⁴ 6A FLETCHER, CYC. CORP. §§2939, 2940 (1950); BALLANTINE, CORPORATIONS, rev. ed., §85 (1946); STEVENS, CORPORATIONS, 2d ed., 248 (1949); COUSENS, "How Far Corporations May Contribute to Charity," 35 VA. L. REV. 401 (1949).

enhance the goodwill of the corporation and enable the corporate donor to secure more highly trained employees.⁵ Language used by the court in the principal case indicates that the requirement of the common law rule is satisfied if the donation contributes to the "actual survival of the corporation in a free enterprise system."⁶ It appears that the court in the principal case has so expanded the common law limitation as to make it no limitation at all. Many legislatures have enacted statutes which authorize corporations to donate to charity.⁷ Although the basis of the holding in the present case is not entirely clear, it would seem that the court could have rested its decision solely on the New Jersey statute.⁸ Thus it is likely that the apparent expansion of the common law rule in the principal case will not be adopted in jurisdictions which do not have a similar statute.

Proponents of corporate gifts to education contend that since the wealth of the country is becoming centered in corporations it is the duty of these corporations to support educational institutions as individuals have previously done.⁹ They argue that such corporate support is necessary to prevent the transformation of private education into state-dominated education and a consequent impairment of the capitalistic system of free enterprise.¹⁰ As a more specific benefit from these donations, it is contended that the gifts will increase the supply of well-rounded talent available for management positions, and that

⁵ *Armstrong Cork Co. v. H. A. Meldrum Co.*, (D.C. N.Y. 1922) 285 F. 58; *Evans v. Brummer, Mond & Co.*, [1921] 1 Ch. 359.

⁶ Principal case at 586.

⁷ The following statutes have been enacted: Ark. Acts (1951) No. 69; Cal. Corp. Code (Deering, 1953) §802(g); Colo. Stat. Ann. (1953 Supp.) c. 41, §26; Hawaii Sess. Laws (1947) series c-138; Ill. Rev. Stat. (1953) c. 32, §157.5(m); Ind. Stat. Ann. (Burns, 1948; 1953 Cum. Supp.) §25-211b; Kan. Stat. (Corrick, 1949; 1951 Supp.) §17-3009; Me. Rev. Stat. (1944) c. 49, §15, as amended, Me. Rev. Stat. (1951) c. 49, §15; Mass. Gen. Laws (1932) c. 155, §12, as amended by Mass. Gen. Laws (1938) c. 164, as amended by Mass. Gen. Laws (1946) c. 278; Mich. Comp. Laws (1948) §450.10; Minn. Stat. (1949) c. 300.66; Mo. Rev. Stat. (1949) §351.385; N.J. Rev. Stat. (1937) §14:3-13, as amended, N.J. Cum. Supp. (1950) §14:3-13; N.M. Laws (1951) c. 105; 22 N.Y. Consol. Laws (McKinney, 1943) §34; N.C. Gen. Stat. (1950) §55-26; Ohio Rev. Code (Baldwin, 1953) §1702.26; Okla. Stat. (1951) tit. 18, §1.17; Pa. Stat. Ann. (Purdon, 1953 Supp.) tit. 15, §716; Tenn. Code Ann. (Williams, 1934) §4085, as amended by Tenn. Laws (1943) c. 881(2); Tex. Rev. Civ. Stat. Ann. (Vernon, 1925) art. 1349; W.Va. Code (1949) §3015(3). For an analysis of the application of these statutes to pre-existing corporations see: 52 HARV. L. REV. 538 (1939); De Capriles and Garrett, "Legality of Corporate Support to Education: A Survey of Current Developments," 38 A.B.A.J. 209 (1952); 67 HARV. L. REV. 343 (1953). There may be a problem of statutory construction as to whether the proposed object of the gift is within the limits of the statute. See *James McCord Co. v. Citizens' Hotel Co.*, (Tex. Civ. App. 1926) 287 S.W. 906, where it was held that the purchase of stock in a hotel was a contribution to a "civic enterprise."

⁸ Note 2 *supra*.

⁹ De Capriles and Garrett, "Legality of Corporate Support to Education: A Survey of Current Developments," 38 A.B.A.J. 209 (1952); Dodd, "For Whom Are Corporate Managers Trustees?" 45 HARV. L. REV. 1145 (1932); Bleicken, "Corporate Contributions to Charities: The Modern Rule," 38 A.B.A.J. 999 (1952).

¹⁰ De Capriles and Garrett, "Legality of Corporate Support to Education: A Survey of Current Developments," 38 A.B.A.J. 209 (1952).

educated persons constitute a better market than those not so well educated.¹¹ Opponents of corporate gifts to education rely on the more technical argument that corporations are organized and operated for the benefit of the stockholders only, and that all efforts of the board of directors must be directed toward that end.¹² They feel that corporate gifts to education do not benefit stockholders as a class. An analysis of these contentions reveals that they seem to differ only in the degree of directness by which the gift must benefit the corporate donor. When the question of the validity of a proposed corporate gift to education arises in a state having only the common law rule, the outer limits of the concept of benefit to or promotion of the corporate purpose seem to be established by *Armstrong Cork Co. v. H. A. Meldrum Co.*,¹³ which upheld gifts for securing goodwill and trained employees. When the issue arises in a jurisdiction which has an appropriate statute, necessarily the language of the statute is decisive; however, it would appear that because of the present approval of the broad policy behind such statutes the courts will be liberal when faced with problems of statutory construction. If declaratory judgment procedure is available as in the principal case and the use of this procedure is financially practical, it would seem advisable to utilize such procedure in order to protect a corporate director either where the donation in a common law state goes outside the scope of the rule in *Armstrong Cork Co. v. H. A. Meldrum Co.* or where there is a close question of statutory construction as to the proper objects of the donation.¹⁴

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¹¹ Bell, "Corporate Support of Education: The Legal Basis," 38 A.B.A.J. 119 (1952).

¹² *Dodge v. Ford Motor Co.*, 204 Mich. 459, 170 N.W. 668 (1919). For a presentation of this argument see Dodd, "For Whom Are Corporate Managers Trustees," 45 HARV. L. REV. 1145 (1932), where it is predicted that this argument is losing weight and will lose adherents.

¹³ Note 5 supra. For a presentation of suggested donative programs which appear to be within the purview of this rule, see Bell, "Corporate Support of Education: The Legal Basis," 38 A.B.A.J. 119 (1952).

¹⁴ See generally RUMML, *THE MANUAL OF CORPORATE GIVING* (1952); ANDREWS, *CORPORATION GIVING* (1952).