

# SENATE . . . . No. 411

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## The Commonwealth of Massachusetts.

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*To the Honorable the Senate of the Commonwealth of Massachusetts:*

The Justices of the Supreme Judicial Court, having considered the questions of the order of April 8, 1921, copy whereof is hereto annexed, respectfully return these answers:

All the questions relate to religious societies and other charitable corporations. Of the several corporations mentioned in the bills accompanying the order, two, The First Church in Boston (House Nos. 1120 and 1243, St. 1828, c. 122) and The First Church in Roxbury (House, No. 1152, St. 1824, c. 133), and perhaps others, were incorporated before March 11, 1831, the date of the passage of the first general law reserving to the General Court the right to amend, alter or repeal acts of incorporation. These, therefore, are within the protection of the principle of the Dartmouth College case, 4 Wheaton, 518, to the effect that legislation impairing rights and privileges conferred by the charter of private eleemosynary corporations is invalid under the Constitution of the United States. One bill, House No. 1152, allows persons to vote on the question of accepting the act who cannot now vote on other questions affecting the corporation. One bill House No. 1139 undertakes to abolish a trust as established by its founder. Several of the bills seemingly purport to authorize changes in the terms upon which property devoted to charitable uses is to be held and enjoyed. See House Nos. 1120, 1243, 1139, 1231. All or substantially all of the bills appear to relate to the administration of existing valid and enforceable charitable

trusts, the purposes of which have not been fulfilled and in which numerous persons not assenting to their termination or modification may be directly interested.

We are not advised concerning the terms of these trusts and we do not know the conditions attendant upon their present execution.

Gifts to trustees or to eleemosynary corporations, accepted by them to be held upon trusts expressed in writing or necessarily implied from the nature of the transaction, constitute obligations which ought to be enforced and held sacred under the Constitution. It is not within the power of the legislature to terminate a charitable trust, to change its administration on grounds of expediency, or to seek to control its disposition under the doctrine of *cy pres*. *Cary Library v. Bliss*, 151 Mass. 364. *Crawford v. Nies*, 224 Mass. 474, 488. Determination of the uses to which shall be devoted trusts no longer susceptible of execution according to their foundation is a well recognized branch of chancery jurisdiction. It is a subject respecting which there is constant resort to the judicial courts for decision. The General Court may authorize the conversion into personalty of real estate held on trusts, which cannot otherwise be conveyed, exercise a considerable power over charitable trusts held by municipalities, and enact general laws respecting the regulation of charitable trusts. *Jackson v. Phillips*, 14 Allen 539, 574, 576, 580, 591, 592. *Sohier v. Trinity Church*, 109 Mass. 1, 17. *Forster v. Forster*, 129 Mass. 559, 564. *Ware v. Fitchburg*, 200 Mass. 61, 72.

This brief statement of general principles is all that we feel justified in making on the meagre information which we possess concerning the original nature and the present circumstances of the several trusts to be affected by the bills. No final opinion can be expressed without fuller knowledge of facts. Moreover charitable trusts are frequently brought to the consideration of the courts. It seems manifest that persons having private interests and possibly those representing the public might resort to the judicial department of government for adjudication regarding their rights, if any of these bills should be enacted into statutes. It was said in

*Opinion of Justices*, 122 Mass. 600, at 602: "In view of the separation, established by the Constitution, between the legislative, the executive and the judicial departments of the government, we can hardly suppose it to have been the intention that either the legislative or the executive should demand of the judiciary its opinion, in advance, upon a question which may arise in the course of judicial administration, and which cannot be affected by legislative or executive action." These words are applicable to the questions presented by the present order.

Therefore the Justices of the Supreme Judicial Court respectfully ask to be excused from further consideration of these matters until they shall have been presented and argued by counsel in the ordinary course of administration of justice.

ARTHUR P. RUGG.  
HENRY K. BRALEY.  
CHARLES A. DECOURCY.  
JOHN C. CROSBY.  
EDWARD P. PIERCE.  
JAMES B. CARROLL.  
CHARLES F. JENNEY.

## The Commonwealth of Massachusetts.

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SENATE, April 8, 1921.

*Whereas*, There are pending in the Senate certain bills, variously affecting the administration, control and application of certain religious, educational and charitable trusts and gifts, copies of which bills in their printed form are hereto annexed, to wit:—

An Act To authorize the Union of the South End Reading Room Association with the Peoples Methodist Episcopal Church in Newburyport, printed as Senate, No. 285;

An Act To Enable the First Church in Boston to convey its Property to Trustees, printed as House, No. 1120, as amended by the House of Representatives, upon the recommendation by the Governor (See House, No. 1243);

An Act To authorize the Union of the First Congregational and South Congregational Societies of Ipswich, printed as House, No. 1121;

An Act to authorize the Worcester Tuberculosis Association to transfer its Property to the Worcester Society for District Nursing, printed as House, No. 1123, as amended by the House of Representatives, upon the recommendation by the Governor (see House, No. 1244);

An Act To authorize the Massachusetts Universalist Convention to hold the Jonathan Stetson Fund Free and Clear of Certain Trusts, printed as House, No. 1139;

An Act To authorize the All Souls Unitarian Church in Roxbury to convey its Property to the First Church in Roxbury, printed as House, No. 1152;

An Act To provide for uniting the Massachusetts Women's Hospital Corporation and the Woman's Charity Club, printed as House, No. 1231; together with data relative to the several corporations aforesaid, and

*Whereas*, Doubt exists as to the constitutional power of the General Court to enact said bills into law, therefore be it

*Ordered*, That the Senate require the opinions of the Honorable the Justices of the Supreme Judicial Court on the following important questions of law:—

(1) Would the enactment of any or all of said bills be a violation of the Constitution as an exercise of judicial power by the General Court?

(2) Would such enactment in any other particular violate the Constitution of the United States or of the Commonwealth?

(3) If any of said bills be unconstitutional and therefore invalid in respect to one or more trusts or gifts, is such bill unconstitutional in its entirety?

(4) Are any or all of said bills beyond the constitutional power of the General Court to enact?

(5) If one or more of said bills are in their present form beyond the power of the General Court, would the constitutional objection to them or any of them be removed by providing that the act shall take effect with respect to the proposed substitution of trustees or the proposed disposition of the trust property, or both, upon the rendition of a final decree of a court of competent jurisdiction authorizing the application or disposition of the trust funds or property, upon such terms and conditions as such court may prescribe?

HENRY D. COOLIDGE,  
*Clerk.*





