

Groups' Selfless Efforts to Protect Public Charitable Trust



I am often asked “since you are such an advocate for animal welfare and a foster-dog caregiver yourself, why did you try to prevent the Humane Society of Indianapolis from getting that trust money? Why are you so against the Humane Society?” My immediate response is that I fully support the tremendous work of the Humane Society’s volunteers and employees! Were it not for them, Ranger never would have come into my family eight years ago, and that would have been a huge loss.

Then, I explain that my clients (numerous animal welfare organizations in Central Indiana) and I never wanted to take money away from the Humane Society. In fact, my clients’ actions would have required continuing exactly what Mrs. Crume intended when she created the public charitable trust more than 80 years ago: HSI was to receive a perpetual flow of cash income each year to subsidize its efforts in caring for Central Indiana’s lost and abandoned pets.

Instead, what my clients tried to prevent was the unreasonable risk posed to that public charitable trust by the self-interested trustee / financially distraught income recipient (HSI served both roles). For its own use, the Humane Society requested that the liquid assets of the public charitable Crume Trust – approximately \$3,400,000 – be used as collateral so that the Humane Society could receive a bank loan for itself of up to \$1,700,000. The Humane Society said that, without that loan, it would have to close its doors.¹

For your more thorough understanding of **why** the animal welfare providers fought so selflessly to protect the Mary Powell Crume public charitable trust, please read the actual language creating the trust:

“ . . . I give, devise and bequeath all of the trust estate and property referred to in Item IV and V of this Will to the Indianapolis Humane Society of the City of Indianapolis, Indiana *as Trustee*, to have and to hold the same perpetually in trust *for the sole purpose of using the net income* there from for the relief of animals which come under its care. Said last mentioned *Trustee shall have no power or authority to use either the principal or the income* of said trust estate and property to pay *for the building, equipment, salaries, or any other expenses* other than the relief of said animals.” (*Emphasis added*)

There are several important points to construe from Mrs. Crume’s language written in 1921.

First, the trust was not set up to benefit the Humane Society; rather, Mrs. Crume intended the **public** benevolent trust to benefit the lost and abandoned animals in the Indianapolis community. Indeed, a “public benevolent trust” (as Mrs. Crume described it) differs from a private one in that the public or community is intended as the beneficiary; where a private charitable trust may be intended to benefit a particular organization. Mrs. Crume never expressly designated the Humane Society as a beneficiary –

¹ Keep in mind that this was the third charitable trust to be invaded by HSI – the Board had already depleted its own multi-million dollar charitable trust and had borrowed against a private trust to the tune of \$900,000 – in addition to the spend-down of more than \$13 million in investment assets AND more than \$600,000/per year in donations from people like you and me.

though HSI would receive the income and put it to the charitable uses she specified. The Indianapolis Humane Society was simply the conduit, the instrumentality, through which cash income was converted to service in fulfilling the public charitable purpose. The public at large is the true and only beneficiary of a public charitable trust.

Second, the purpose of the Trust's investments was to provide a perpetual income stream on an annual basis and the trustee was to utilize only the trust income: "to have and hold the same perpetually in trust *for the sole purpose of using the net income therefrom* for relief of animals".

Although the Marion County Superior Court had previously granted the trustee the right to invade Trust principal for existing and/or new capital improvements so that the organization could better serve the animals, in each case the Crume Trust always received some exchange in value or other security against loss. For example, in 1967 the Court allowed the trustee to use principal to purchase land and structures in order to re-locate the organization to its present location. In exchange for that invasion of principal, the Court ordered that the Crume Trust – not the Humane Society – would be the owner of that land and would have a right to all buildings and improvements on that land if the Humane Society ever ceased operations.² In this situation, however, no such security or exchange of value to the Trust was required by the Probate Court in order for HSI to put the Trust assets at risk.

Third, it is clear from the language that Mrs. Crume intended the income from this public charitable trust to merely subsidize the organization that was carrying out the trust's public charitable purpose; not to be that entity's sole source of funds. Had she intended the Crume Trust to pay for any and all costs the Humane Society incurred in its operations, or to completely pull it out of financial ruin, she would not have articulated such specific restrictions on both the principal and income. Mrs. Crume never intended that her assets be used as a bail-out fund for the conduit organization.

Finally, "if it ain't broke, don't fix it." The Crume Trust paid HSI more than \$100,000 annually in the last several years; therefore, the Crume Trust was not broken, it was thriving! Thus, there was no reason for the trustee to seek to deviate from its terms since the trust was (and is) consistently producing the intended cash flow to the conduit organization. Further, even if the Humane Society had gone bankrupt, Mrs. Crume's charitable intent – providing a perpetual cash income stream so that Indianapolis' pets and strays could be cared for – would not have been broken or defeated. Rather, under a long-standing legal doctrine and 40-year old statute, if the conduit organization named in a charitable trust ceases to exist or no longer fulfills the charitable intent of the trust, then a different conduit organization can be named to fulfill that trust's charitable purpose. When Mrs. Crume created this trust in 1921, there were no recognized charitable organizations to fulfill her dream other than HSI. However, today there are more than 20 organizations in Marion County that fulfill most or all of the services that she intended. The Court could appoint any of them or several of them to serve as the charitable conduits of the Crume Trust so that its charitable purpose would continue in perpetuity.

Not one of my clients nor I desired to see the Humane Society cease operations as a result of its significant financial plight; the toll on all other local animal welfare organizations would be great. But if

² Despite this Court order – the Board of HSI attempted to obtain loans posting such Trust-owned land as collateral. When such loans failed, the Board of HSI struck a deal with Attorney General Carter: HSI would get a loan from its co-trustee, National City Bank, and, in the event that HSI defaulted on that loan, HSI would give to the Crume Trust HSI's purported real estate and buildings and improvements. AFTER my clients educated the Attorney General that the Crume Trust already owned that land and had the reversionary interest in the buildings and improvements as the Court ordered 40 years ago, the Attorney General's office withdrew from the deal.

the Humane Society was going down, we sought to ensure that that HSI did not take the Crume Trust down with it! The victim here is the future viability of the public charitable trust, not HSI.

Alas, we were never able to present these arguments to the Marion County Superior Court or even the Court of Appeals. The Attorney General and the Humane Society of Indianapolis, Inc. adamantly opposed my clients' – **in fact, ANY member of the public's** – legal standing to bring such challenges involving a public charitable trust. As such, no pertinent testimony nor evidence was presented to the Court to (i) construe Mrs. Crume's charitable intent, (ii) prove the Trust was thriving in its purpose, or (iii) demonstrate how HSI got into the financial crisis. The only evidence presented in court was an agreement struck between HSI and the Attorney General.

To date, the **Attorney General still has not required** that the trustees – HSI and National City – disclose the terms of the loan against Crume Trust assets in their annual public accounting. No member of the public is allowed to know how much the Humane Society has borrowed to date against the Crume Trust principal, the interest or length of the loan, whether the borrower is meeting its obligations on repaying the loan, nor whether the principal of the Crume Trust is presently in jeopardy. This is a public charitable trust! Doesn't the public have a right to know?

In my professional and personal opinion, **no beneficiary or trustee should be allowed to take the principal (the original and accumulated investments) of ANY public charitable trust to some lender and offer that trust property as collateral for an otherwise unsecured "personal" loan.** This is the equivalent of your credit-risk teenager asking a bank for a personal loan, offering as the sole collateral *your (not his)* future earning capacity and present net worth.

Just as no bank would make the loan to someone who already has substantial credit card debt and little or no assets, no bank in Central Indiana would loan the money to HSI on its own financial record. If the banks – which are expert in the business of lending money – would not make that loan, then why would a Court agree to effectively make that loan from a public charitable trust? Apparently, the Indiana Court of Appeals was scratching its head with the same question: "We address in this decision only the standing question, and **express no opinion on the propriety of the probate court's decision to allow the Humane Society to pledge 90% of the Crume Trust's assets.**" (fn. 3, 49A05-0409-CV-429)

I implore you to urge our legislators to adopt changes to Indiana's Trust Code that make it impossible for any public charitable trust to be pledged as collateral for any reason. I urge you to scrutinize the Attorney General's actions and omissions (and political timing) in this horrific conflict of interest case versus his actions in the highly-publicized Conner Prairie –Earlham College case, and then cast your vote accordingly.

I am honored to have worked with the altruistic individuals and organizations that were willing to fight on behalf of a cause that was always larger than their own interests. And I really do believe that HSI employees and volunteers who care for our lost and abandoned pets are gifts to the community. I just don't believe the HSI Board or National City Bank acted properly in jeopardizing the public charitable trust to which they owe the highest fiduciary duty.

Sincerely,

Veronica Jarnagin