

1956

# In the Matter of the Estate of Sam N. Manatakis : Brief of Respondent

Utah Supreme Court

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Frank E. Moss; John L. Black;

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**IN THE SUPREME COURT**

**of the**

**STATE OF UTAH**

**FILED**

AUG 30 1956

In the Matter of the Estate of \_\_\_\_\_  
SAM N. MANATAKIS, sometimes Clerk, Supreme Court, Utah  
known as Sam Manatakis, and as  
Sotiros N. Manatakis and as Sam  
Nekas,

*Deceased.*

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**BRIEF OF RESPONDENT**

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**FRANK E. MOSS**  
*Salt Lake County Attorney*  
**JOHN L. BLACK,**  
*Deputy, Civil Division*  
*Attorneys for Respondent*

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# IN THE SUPREME COURT

## of the

# STATE OF UTAH

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In the Matter of the Estate of  
SAM N. MANATAKIS, sometimes  
known as Sam Manatakis, and as  
Sotiros N. Manatakis and as Sam  
Nekas, } No. 8534  
*Deceased.* }

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## BRIEF OF RESPONDENT

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### PRELIMINARY STATEMENT

All italics are ours.

### FACTS

Appellant states on Page 2 of its Brief "There was no evidence offered at the hearing except a stipulation \* \* \*" and then a statement of the contents of said stipulation follows. In appellant's designation of the record on appeal, the transcript is designated. However, the stipulation referred to is the only part of the transcript included in the record on appeal. The evidence at trial included statements of witnesses in Rock Springs, Wyoming, which, by stipulation, were introduced in evidence.

These statements substantiate Finding of Fact No. 4 (R 8) which states as follows:

“That decedent had lived in Salt Lake County for some 28 years prior to his death having come directly to Salt Lake County from his native home in Greece.”

It is felt that the omission of this part of the record is harmless in that appellant, in its Brief, made no attack whatsoever on this finding.

## STATEMENT OF POINTS

### POINT I

THE WILL TOGETHER WITH THE EVIDENCE CLEARLY SUPPORTS THE FINDING OF THE TRIAL COURT THAT THE TESTATOR INTENDED THE BEQUEST FOR THE BENEFIT OF THE SALT LAKE COUNTY HOSPITAL.

### POINT II

THE DECREE OF THE TRIAL COURT AWARDING THE BEQUEST TO SALT LAKE COUNTY TO BE HELD IN TRUST FOR THE USE AND BENEFIT OF THE SALT COUNTY HOSPITAL SHOULD BE UPHELD.

## ARGUMENT

### POINT I

THE WILL TOGETHER WITH THE EVIDENCE CLEARLY SUPPORTS THE FINDING OF THE TRIAL COURT THAT THE TESTATOR INTENDED THE BEQUEST FOR THE BENEFIT OF THE SALT LAKE COUNTY HOSPITAL.

It is believed that the first argument as to the interpretation of the will should give the court little

trouble in sustaining the Trial Court's interpretation. In Finding of Fact No. 5 (R 8), the court stated:

“That decedent intended the bequest of the money in his name to be used for the benefit of the Salt Lake County Hospital located at 2033 South State Street, Salt Lake City, Utah.”

It is submitted that the trial court did not have to resort to speculation and conjecture to determine the wish of the testator. The will clearly states an intention to leave his money to the Salt Lake County Hospital. The testator had come to Salt Lake County from Greece some 28 years ago and had lived in Salt Lake County ever since. It does not appear that testator was acquainted with any other county in the United States. There was no evidence introduced by appellant that any other county hospital than the Salt Lake County Hospital could possibly have been intended by deceased. There is only one county hospital in Salt Lake County and it is commonly called the “County Hospital.” The fact that testator lived in Salt Lake County ever since coming over from Greece leads inescapably to the conclusion that he intended the Salt Lake County Hospital to be the recipient of his savings. Appellant contends that testator left his money in the alternative to the public hospital or the county hospital for the poor. Such an argument rebels against logic and ordinary reasoning. It is evident that testator was merely trying to further identify the object of his bounty by the reference to the public hospital and adding the words “for the poor.” It is common knowledge that the Salt Lake County Hospital is the

public hospital and is the hospital for the poor. These words instead of confusing the intent of the testator as contended by appellant, further clarify and define the intent. There is only one hospital in this area that comes within the words of the testator, and that very obviously is the Salt Lake County Hospital located at 2033 South State Street, Salt Lake City, Utah.

Certainly, a view as is contended for by appellant would do violence to Section 74-2-1, Utah Code Annotated, 1953, which reads as follows:

“A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.”

This statute gives force to the long standing rule that a testator's intent should be carried out.

There are several cases discussed in the annotation at 94 A.L.R. 26, at Pages 93-95, which uniformly show that courts have considered such bequests in the light of testator's surroundings and have used extrinsic evidence to further clarify the intent of the testator. We do not have a situation in the case at bar as existed in many of these cases where there were two or more hospitals or asylums which might fit within the wording of the will. In the case at bar, appellant cannot reasonably suggest that there are any other hospitals which come within the words of the will, but urges that the entire will be defeated for lack of an ascertainable beneficiary.

## POINT II

THE DECREE OF THE TRIAL COURT AWARDING THE BEQUEST TO SALT LAKE COUNTY TO BE HELD IN TRUST FOR THE USE AND BENEFIT OF THE SALT COUNTY HOSPITAL SHOULD BE UPHELD.

Appellant contends that Salt Lake County does not have power to receive testamentary dispositions. In the first place, there is specific statutory authority conferring this power on counties.

Section 17-5-44, Utah Code Annotated, 1953, states:

“Donations for county purposes—They may receive from the United States *or other sources*, lands and *other property* granted or donated to the county for the purpose of aiding in the erection of county buildings, roads, bridges, *or for other specific purposes*, may use the same therefor, and may provide for sale of the same and the application of the proceeds thereof.”

It is respectfully submitted that this statute gives express authority for the County to receive the bequest in question. It can be noted that the statute makes no limitation as to the source. The only limitation made by the statute is that the gift be for a specific purpose. The gift in question is for the County Hospital which in turn is operated for the health and welfare of the County. This is a specific purpose. There are three departments within the County, Roads and Bridges, Finance and Purchase and Health and Charity. The County Hospital is operated under the Health and Charity Department. Certainly, the gift to the Hospital is for a specific County purpose.



Even in absence of a statute conferring the power to receive gifts, there is ample authority to the effect that municipal and public corporations have the implied power to receive gifts.

It is stated in III Dillon, *Municipal Corporations* (5th Ed.) pp 1567 to 1569:

“Municipal and public corporations may be the objects of public and private bounty. This is reasonable and just. They are in law clothed with the power of individuality. They are placed by law under various obligations and duties. Burdens of a peculiar character rest upon compact populations residing within restricted and narrow limits, to meet which property and revenues are absolutely necessary, and, therefore, legacies of personal property, devises of real property, and grants or gifts of either species of property directly to the corporation for its own use and benefit, intended to and which have the effect to ease it of its obligations or lighten the burdens of its citizens, are, in the absence of disabling or restraining statutes, valid in law.

\* \* \*

“Not only may municipal corporations take and hold property in their own right by direct gift, conveyance, or devise, but the cases firmly establish the principle, also, that such corporations, at least in this country, are capable, unless specially restrained, of taking property, real and personal, in trust for purposes germane to the objects of the corporation, or which will promote, aid, or assist in carrying out or perfecting those objects.”

Also see McQuillan, *Municipal Corporations*, 3rd Ed. par. 28.16, and *Joint County Park Board of Ripley, Dearborn and Decatur Counties v. Stegemoller, et al.*, (1949), Indiana, 88 NE 2nd 686, where it is stated at p. 691:

“Municipal corporations also have the implied power to receive gifts upon trust which are germane to the purposes of such corporation.”

Although the question was not directly raised by appellant, it is submitted that the trial court correctly decreed that the bequest be given to Salt Lake County to be held in trust for the use and benefit of the Salt Lake County Hospital.

There is a clear line of authority in New York which has applied the doctrine of *cy pres* to cases with similar fact situations to the case at bar.

The case of *In re Pfizer's Estate*, Circuit Court of New Jersey, Chancery Division, 1954, 110 A. 2nd 40, involved a will where the testator left legacies among others, to two New York hospitals which were branches of the department of hospitals of New York City. The New Jersey Court, relying on a line of New York cases, held that the bequests could not be defeated on the ground that the legatees were incompetent to receive them. The court awarded the bequests to New York City to be held in trust for the purposes set forth in the bequests.

The case of *In re Jones Will*, Surrogate's Court, Kings County, 1949, 90 NYS 2nd 598, involved a bequest made to a village fire department. The evidence showed

that the fire department was an unincorporated association under the supervision and control of the Board of Trustees of the incorporated village of Pawling. New York had a statute providing that an unincorporated association could not take a devise or bequest. The court held that the bequest was to be paid to the village of Pawling for the use and benefit of its fire department.

Another New York case upholding this proposition is *Prudential Insurance Company of America v. New York Guild for Jewish Blind*, et al, Supreme Court, Appellate Division, First Dept., 1937, 299 NYS 917. The will in question contained a legacy to the Cancer Clinic of New York which was a clinic maintained by the City of New York. The court stated at page 919:

“Where a gift is made for charitable purposes to an organization, which, though it is unincorporated, is a branch or subsidiary of a corporation, the courts have held the gift effective by awarding it to the corporation to be held by it in trust for the purposes of the gift (citing cases).

“The absence of express words of trust does not prevent the application of the cy pres powers of the court. (citing cases)”

Other New York cases upholding this doctrine are *In re MacKenzie's Will*, Surrogate's Court, Kings County, 1950, 96 NYS 2nd 241; *In re Clark's Will*, Surrogate's Court, Kings County, 1952, 112 NYS 2nd 288; and *Petition of Roman Catholic Diocese of Brooklyn New York*, Surrogate's Court, Kings County, 138 NYS 2nd 174.

A general statement as to the law in this country in this regard is contained in Bogert, Trusts and Trustees, Vol. 2 p 1302:

“The second class of cases in which the English courts held that relief must come from the Crown were those in which a gift was made merely to ‘charity’ or to the ‘poor’ without mention of a trust or trustee. Several cases of this type have arisen in the United States where the court has been faced with the problem whether or not it would hold the gift valid and supervise its execution or treat it as void. In nearly all cases the courts have validated the gift by appointing a trustee or directing the framing of a scheme for the administration of the gift. This seems to amount to implying a direction that there be a trust which is doubtless a very reasonable implication.”

Also, see Bogert, Trusts and Trustees, Vol. 2, par 4, pp. 431 through 441.

## CONCLUSION

The bequest of the testator should be upheld as a valid testamentary disposition. The court should not close its eyes to the circumstances surrounding the making of a will. Certainly, a testator cannot be placed in a vacuum away from his surroundings. His intention must be interpreted in context. It is obvious, taking testator in context, that his intent was to leave his savings to the Salt Lake County Hospital.

The great weight of authority in this country is that

a charitable bequest will not fail merely for any technical disability of the legatee to receive it directly. Since the Hospital is a department of the County under the control of the County Commission, the clear line of authority in this country would simply award the bequest to the County in trust for the use of the County Hospital. This appears to be a realistic attitude adopted by courts to carry out the intention of testators by placing the funds in the correct procedural channels. Certainly, ordinary testators cannot be expected to know all of the ins and outs of the modern complex organization of municipal and public corporations.

The statute heretofore cited grants specific power to the counties to receive gifts whether intervivos or testamentary. The gift in question was for a specific purpose in that it was for the County Hospital.

Respectfully submitted,

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