

Decision 82 05 009 MAY 4 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumers Lobby Against Monopolies)
David L. Wilner, in pro per.,)

Complainant,)

vs.)

THE PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY, a California corporation,)

Defendant.)

Case 10066
(Filed March 9, 1976)

(See Decision 92914 for Appearances)

SUPPLEMENTAL OPINION

In this decision we approve the Declaration of Trust and By-Laws of the "Advocates Trust Fund of the California Public Utilities Commission" authorized in Decision (D.) 93251 (June 30, 1981). We also approve the appointment of the Pacific Union Bank and Trust Company as Trustee.

In D.93688, the Commission authorized Mr. Arthur W. Simon, Esq., to draw up the Declaration of Trust and By-Laws for the Advocates Trust Fund (Fund), obtain a ruling from federal and state authorities as to the tax exempt status of the Fund, and recommend a trustee for the Fund.

Mr. Simon has now completed two of these tasks. Upon our approval of the Declaration of Trust and By-Laws and of the Trustee, he will seek appropriate rulings regarding the Fund's tax exempt status.

Attached to this decision are: Appendix A - proposed Declaration of Trust; Appendix B - proposed By-Laws, and Appendix C - a letter from Pacific Union Bank and Trust offering to perform trustee services for the Fund.

The Declaration of Trust states the purpose and corpus of the Fund. It identifies the Commissioners of the California Public Utilities Commission as members of the Disbursements Committee. It specifies the powers, responsibilities, and compensation of the Trustee. Finally, it contains provisions related to the situs and severability of the trust agreement.

The Declaration of Trust is a formal trust agreement between a nominal trustor (Mr. Selby, who is a member of the Commission staff) and a trustee. This agreement creates the Advocates Trust Fund. Pacific Telephone and Telegraph Company will be ordered to pour into the Trust the sum it agreed to pay in D.93251, plus accumulated interest, when the tax exempt status of the trust has been determined.

The By-Laws more particularly state the powers of the Disbursements Committee and are written in such a manner as to place all authority and responsibility for the Fund completely and solely with the Commissioners of the California Public Utilities Commission.

Mr. Simon researched a wide range of candidates for trustee of the Fund, including large financial institutions and bonded individuals performing such services. He recommends the Pacific Union Bank and Trust Company of Menlo Park, California. Compared to fees in excess of \$2,000 per year quoted by major financial institutions, the fee quoted by the Pacific Union Bank and Trust Company of \$500 per year is reasonable. The principal services to be performed by the bank are investment of the Trust's funds in short-term financial instruments, including certificates of deposit, and disbursement of funds upon order of the Commission acting as the Disbursements Committee. The bank shall also prepare quarterly and annual reports and arrange for an annual audit of the Trust, as well as file state and federal fiduciary income tax returns.

We conclude the Declaration of Trust and By-Laws are proper and should be adopted. We also conclude that the Pacific Union Bank and Trust Company should be appointed trustee.

Findings of Fact

1. The attached Declaration of Trust properly identifies the respective powers and responsibilities of the Disbursements Committee and the Trustee for the Advocates Trust Fund envisioned in D.93251.

2. The attached By-Laws for the Advocates Trust Fund properly identify the powers and responsibilities of the Disbursements Committee of the Advocates Trust Fund envisioned in D.93251.

3. The Declaration of Trust and By-Laws are reasonable and appropriate means for accomplishing the purposes of the Advocates Trust Fund envisioned in D.93251.

4. The offer of Pacific Union Bank and Trust Company to serve as trustee of the Advocates Trust Fund is made on reasonable and acceptable terms.

Conclusions of Law

1. The Declaration of Trust and By-Laws for the Advocates Trust Fund should be approved.

2. Pacific Union Bank and Trust Company should be appointed trustee of the Advocates Trust Fund.

3. The following order should be adopted.

4. Because of the need to initiate the process of obtaining a Ruling from the Internal Revenue Service on the Advocates Trust Fund's tax-exempt status, the following order should be made effective the date of signing.

SUPPLEMENTAL ORDER

1. The Executive Director is directed to inform Mr. Arthur W. Simon that the Declaration of Trust and By-Laws of the Advocates Trust Fund have been approved by the Commission.

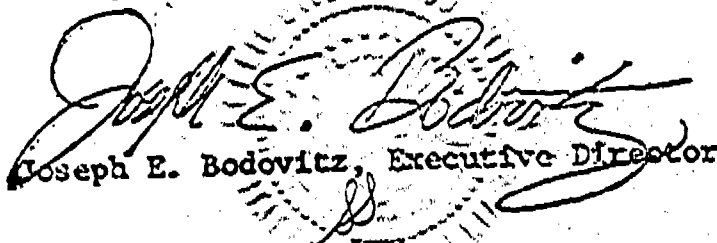
2. Mr. E. N. Selby, of the Commission staff, is authorized, as nominal trustor, to enter into a trust agreement with Pacific Union Bank and Trust Company, as trustee, for the establishment of the Advocates Trust Fund of the California Public Utilities Commission under the Declaration of Trust and By-Laws approved in this decision.

This order is effective today.

Dated May 4, 1982, at San Francisco, California

John E. Bryson
President
Richard D. Gravelle
Leonard M. Grimes, Jr.
Victor Calvo
Priscilla C. Grew
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

ADVOCATES TRUST FUND
of the
CALIFORNIA PUBLIC UTILITIES COMMISSION

DECLARATION OF TRUST

THIS TRUST AGREEMENT, made this _____ day of _____, 1982, by and between EARL NICHOLAS SELBY (hereinafter referred to as the "Donor"), and _____ (hereinafter referred to as the "Trustee"), creates an ADVOCATES TRUST FUND for the purposes and under the conditions fully set out below.

I. PURPOSE OF TRUST

1.1 This Trust is created solely for charitable purposes.

1.2 The specific purpose for which this Trust is created is to receive, hold and, from time to time, disburse funds from either income or principal solely to defray expenses, including attorneys' fees and expert witness fees directly related to litigation or representation of consumer interests in "quasi-judicial cases," as defined in Consumers Lobby Against Monopolies vs. Public Utilities Commission, 25 Cal.3d 891 (1979) where the California Public Utilities Commission (hereinafter the "CPUC"), has jurisdiction to make attorney fee awards and in any other consumer-interest

representation before the CPUC as the Disbursements Committee, as defined below, may, from time to time, direct.

1.3 The property of this Trust is irrevocably dedicated to charitable purposes and no part of the Trust fund shall inure to the benefit of any private shareholder or individual. No part of the activities of this Trust shall consist of carrying on propaganda, or otherwise attempting to influence legislation, or of participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision hereof, this Trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization which is exempt from taxation under provisions of the California Revenue and Taxation Code Section 23701(d) and the Internal Revenue Code Section 501(c)(3) or by an organization contributions to which are deductible under Section 170(c)(2) IRC, and other applicable legislation and regulations as they now exist or may hereafter be amended.

Upon the dissolution or windup of this Trust, its assets remaining after the payment, or provision for payment, of all debts and liabilities shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its exemption from taxation under Section 501(c)(3) of the Internal Revenue Code, or to a public entity or agency

of the State of California, as may be directed by the Public Utilities Commission of the State of California.

II. NAME OF TRUST

The name of this Trust shall be the ADVOCATES TRUST FUND of the CALIFORNIA PUBLIC UTILITIES COMMISSION and so far as practicable the Trustee shall conduct the activities of the Trust in that name.

III. TRUST FUND

3.1 This Trust is created with an initial contribution from the Donor in the amount of Ten Dollars (\$10.00), in cash, receipt of which is hereby acknowledged by the undersigned Trustee(s).

3.2 Subsequent to the creation of the Trust, an additional contribution to the Trust Fund is to be made by the Pacific Telephone and Telegraph Company, a California corporation, in an amount in excess of \$160,000.00, as specified in Decision (D.) 93251 of June 30, 1981 before the California Public Utilities Commission, Case No. 10066 (Filed March 9, 1976). The Trustee is authorized to receive, from time to time, additional donations from the Donor or from any other source, in cash or in other property acceptable to the trustee. All donations so received, together with the income therefrom, shall be referred to as the Trust Fund and shall be held, managed, administered and paid out by the Trustee

pursuant to the terms of this Agreement and for no other purposes.

3.3 The Trustee hereby accepts the Trust subject to all of the terms and conditions of this Agreement. In carrying out each of the responsibilities under the Trust, the Trustee shall exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

3.4 The Trustee shall be responsible only for the sums actually received by it as Trustee under this Trust Agreement, and shall be under no duty, and shall have no right, to dispute any amount to be paid to it pursuant to this Trust Agreement.

IV. DISBURSEMENTS COMMITTEE

4.1 There is hereby created a Disbursements Committee of the Trust which shall consist of all the current members of the California Public Utilities Commission. Each Commissioner shall automatically be a member of the Disbursements Committee for so long as he or she remains a member of the CPUC. Upon the conclusion of a member's term as Commissioner or should a Commissioner resign or be unable to serve for any reason the successor Commissioner shall automatically become a member of the Disbursements Committee of

the Trust.

4.2 The Disbursements Committee of the Trust shall have sole power to authorize and direct the payment of funds from either income or principal of the Trust Fund. The Committee shall act by majority decision. Votes of members of the Committee shall be recorded on all matters decided.

4.3 The Disbursements Committee shall, from time to time, establish an investment policy for the management of the Trust Fund based upon its estimate of the short-term and long-term requirements for disbursements from the Trust Fund, which policy shall be communicated to the Trustee for the purpose of guiding its investment decisions.

V. POWERS OF TRUSTEE

5.1 The Trustee shall have the power to receive, hold, manage, administer the Trust Fund.

5.2 At such time and in such manner as directed by the Disbursements Committee, the Trustee shall pay over amounts from the Trust Fund, either income or principal, for the purposes set forth in Section I, paragraph 1.2, above.

5.3 The Trustee shall also be authorized to pay over such amounts representing reasonable administrative expenses directly related to the management of the Trust as may be authorized and directed by the Disbursements Committee.

5.4 In furtherance of the investment policy of the Trust as determined periodically by the Disbursements

Committee, the Trustee shall have the authority and responsibility to invest and reinvest and to acquire and dispose of assets of the Trust, and this authority and responsibility shall be exercised in accordance with the standard of care established in Section III, paragraph 3.3, above.

5.5 The Trustee shall have all the powers necessary to hold in trust and manage the assets of the Trust including, under the direction of the Disbursements Committee, the powers:

(a) To collect and receive the income of the Trust and any and all property of the Trust;

(b) To manage, purchase, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease and otherwise deal with all property, in such manner, for such consideration, and on such terms and conditions as the Trustee may decide;

(c) To extend the time of payment of any obligation owing to the Trust and to deposit any property with and to delegate discretionary powers to any committee, including the power to pay expenses, compensation and assessments levied with respect to the deposited property;

(d) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend legal proceedings for or against the Trust, and to represent the Trust in all proceedings in any court of law or equity or before any other tribunal;

(e) To create reserves of assets of the Trust for the payment of expenses, for distributions as required by the Trust, or for any other purposes of the Trust;

(f) To sue or defend in connection with any property held at any time by the Trust, the related costs and attorneys' fees to be a charge against the Trust;

(g) To appoint agents, including appraisers, actuaries, accountants, or legal counsel.

5.6 The Trustee shall incur no liability for any distribution it makes according to the directions of the Disbursements Committee. The Trustee shall not be responsible for the adequacy of the Trust assets to discharge any and all of the obligations of the Trust. Payments authorized and directed by the Disbursements Committee shall be made by check mailed to the address furnished by the Committee.

VI. BOOKS, RECORDS AND REPORTS

6.1 The Trustee shall keep accurate books and records reflecting receipts, investments and disbursements of the Trust, and any other transactions engaged in by the Trust. The books and records shall be open to inspection at all reasonable times by the Disbursements Committee or their designated representatives.

6.2 Not less than quarterly the Trustee shall submit to the Disbursements Committee a full accounting and set of financial statements setting forth receipts, investments and

disbursements of the Trust.

6.3 Annually, the Trustee shall prepare and submit to the Disbursements Committee a statement summarizing the investment history of the Trust and any recommendations for modification of the investment policy of the Trust.

6.4 The Disbursements Committee shall arrange for a yearly audit of the financial statements and affairs of the Trust and its distributions in such detail as may be requested by the CPUC or the Committee, and shall timely provide them with copies of the audit report.

VII. RESIGNATION OR REMOVAL OF TRUSTEE

The Trustee may resign at any time upon the giving of 30 days written notice to the Donor and the Disbursements Committee and the Committee may remove the Trustee at any time upon the giving of 30 days written notice to the Donor and the Trustee. The Committee (or the CPUC) shall thereupon appoint a successor Trustee or Trustees, which may be a corporation, one or more individuals, or a combination thereof, subject to approval by the CPUC. The resignation or removal shall become effective upon acceptance of the appointment by the successor Trustee(s) unless otherwise agreed between the Committee and the Trustee. Any successor Trustee(s) shall have the same rights, powers and duties as it would have had as an original Trustee.

VIII. AMENDMENT OF TRUST AGREEMENT; TERMINATION

8.1 This Agreement may be amended or modified from time to time by further Agreement between the Donor, the Trustee(s) and the CPUC, whenever necessary or advisable for the more convenient or efficient administration of this Trust or to enable the Trustee(s) to carry out the purpose of this Trust more effectively, but no such amendment or modification shall alter the intention of the donor that this Trust be operated exclusively for charitable purposes and in a manner which shall make this Trust tax exempt and the donations to it deductible from taxable income to the extent allowed by the provisions of the Internal Revenue Code and the California Revenue and Taxation Code and other applicable legislation and regulations as they now exist or as they may hereafter be amended. Every amendment or modification of this Agreement shall be made in writing, shall be signed by a duly authorized representative of the Donor and shall be furnished to the appropriate United States and State of California revenue and taxation authority in accordance with law.

8.2 This Trust may be terminated at any time pursuant to order of the CPUC. Upon such termination, the assets of the Trust shall be distributed by the Trustee as and when directed by the Committee in accordance with the order of the CPUC. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Agreement as are necessary and expedient for the orderly

liquidation and distribution of the assets of the Trust.

IX. COMPENSATION OF TRUSTEE; EXPENSES

9.1 The Trustee shall be entitled to reasonable compensation for its services as Trustee under this Agreement and for any extraordinary services at a rate to be agreed upon from time to time between the Trustee and the Committee.

9.2 The Trustee shall deduct from and charge against the assets of the Trust all administrative expenses of the Trust, including fees paid to appraisers, actuaries, accountants and legal counsel, taxes and fees imposed on the Trust, if any, any expenses incurred by the Disbursements Committee in its activities directly related to its responsibilities under this Agreement, and the compensation of the Trustee.

X. MISCELLANEOUS

The Trust shall indemnify and hold harmless the Trustee, its officers, employees, agents, successors and assigns, and the members of the Disbursements Committee and their successors against all liabilities, demands, claims, actions, losses, taxes, expenses (including reasonable attorney's fees) arising out of acts or omissions to act with respect to the purpose of this Trust except in the case of willful misconduct or gross negligence.

XI. SITUS, SEVERABILITY

This Agreement shall be construed in accordance with the laws of the State of California.

If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall not affect any other provision, and it shall be construed and enforced as if the invalid or unenforceable provision had not been included.

IN WITNESS WHEREOF this Agreement has been executed in the City and County of San Francisco, California by the duly authorized agent of the Donor and by the Trustee named herein.

_____, Trustee EARL NICHOLAS SELBY, Donor

...

...

BYLAWS

for the regulation, except as otherwise provided by statute
or its Declaration of Trust
of

ADVOCATES TRUST FUND

of the

CALIFORNIA PUBLIC UTILITIES COMMISSION

ARTICLE I. Offices

Section 1. The principal office of the Advocates Trust Fund is fixed and located at the offices of the California Public Utilities Commission, State Office Building, 350 McAllister St., San Francisco, CA 94102.

Section 2. The California Public Utilities Commission (hereafter referred to as the "CPUC"), is granted full power and authority to change said principal office from one location to another within the State of California. Any such change shall be noted on the Bylaws opposite this Section, or this Section may be amended to state the new location.

ARTICLE II. Trustee(s)

Section 1. The authorized number of Trustee(s) for the Advocates Trust Fund shall be as designated, from time to time, by the CPUC. The Trustee(s) so designated shall serve until:

- (a) removal by the CPUC;
- (b) resignation and replacement by the CPUC;
- (c) inability to serve for any reason.

Section 2. No Trustee(s) shall be personally liable for the debts, liabilities or other obligations of the Trust.

Section 3. If required by the CPUC, the Trustee(s) of this Trust shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the CPUC shall determine.

ARTICLE III. Disbursements Committee

Section 1. The number of members of the Disbursements Committee shall be equivalent to the number of CPUC Commissioners.

Section 2. The Disbursements Committee shall meet in the offices of the CPUC, in San Francisco, California.

Section 3. The Disbursements Committee shall hold an Annual Meeting for the purpose of reviewing activities of the Trust during the preceding year, assessing the activities of the Trustee(s), reviewing the Investment Policy of the Trust, and conducting such other business as may be brought before it. The Annual Meeting shall be held immediately following the first conference of the California Public Utilities Commission in each fiscal year. Notice of the Annual Meeting need not be given to members of the Committee, but shall be given to the public as required by law.

Section 4. Special meetings of the Disbursements Committee may be called for any purpose or purposes at any time by direction of the CPUC or by the joint request of the Trustee(s) and any member of the Disbursements Committee. Notices of such meetings shall be given by personal delivery at the office of each committee member at least 7 days in advance, or by first-class mail deposited at least 10 days in advance, and shall be noticed to the public as required by law. Such notice shall state the purpose or purposes for which the meeting is called, the time and place of the meeting, and whether the meeting is called by the CPUC or by request of the Trustee(s) and a member of the Committee.

Section 5. A quorum for the transaction of business by the Disbursements Committee shall be a majority of the members of the Committee as then constituted. Every act or decision done or made by a majority of Committee members present at a meeting duly held, at which a quorum is present, is the act of the Committee, unless the law, the Declaration of Trust of this Trust, or these Bylaws require a greater number.

Section 6. Notice of a meeting need not be given to any member who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such member. All such waivers, consents and approvals shall be filed with the Trust records as a part of the minutes of the meetings.

Section 7. Every member of the Disbursements Committee, and each and every Trustee(s) shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Trust.

Section 8. The Disbursements Committee shall have the authority, as required, to employ individuals or organizations in the role of consultant or expert in any subject relevant to the efficient management of the Trust or for the purpose of more efficiently achieving its public benefit goals.

Section 9. No member of the Disbursements Committee shall be personally liable for the debts, liabilities or other obligations of the Trust.

Section 10. No member of the Disbursements Committee shall receive any compensation from the Trust for his or her services as such Committee member.

Article IV. Officers

Section 1. The Disbursements Committee shall select, at its annual meeting, one of its members to act as the committee chairperson, and another to act as the official Secretary of the committee for purposes of certifying official records of the committee. The Committee may, in its discretion from time to time create other offices and appoint officers to said offices for this Trust. One person may hold two or more offices, except those of Chairperson and Secretary of the Committee.

Section 2. The duties of the chairperson shall be to conduct the meetings of the Disbursements Committee and to be the normal means of liaison between the Committee and the Trustee(s).

Section 3. The duties of the secretary shall be to certify and maintain the official records of the committee and to give notice of Committee meetings as required by law and these Bylaws.

Article V. Amendments

These Bylaws may be amended or repealed only by the California Public Utilities Commission.

Article VI. Fiscal Year

The Fiscal Year of the Trust shall be coterminous with the fiscal year of the California Public Utilities Commission.

Article VII. Construction

As used in these Bylaws:

- (a) The present tense includes the past and the future tenses, and the future tense includes the present;
- (b) The masculine gender includes the feminine and the neuter and the neuter includes both masculine and feminine;
- (c) The singular number includes the plural, and the plural number includes the singular;
- (d) The word "shall" is mandatory and the word "may" is permissive;
- (e) The word "Trustee(s)" shall refer to one or more individuals who shall be designated by the CPUC, from time to time, to serve in that capacity for this Trust.

CERTIFICATION

I certify that I am the duly appointed Secretary of the Disbursements Committee of the ADVOCATES TRUST FUND of the California Public Utilities Commission that the above Bylaws were duly adopted by the Commission at a meeting held on _____, 1982 in San Francisco, California.

Secretary

...
...

PACIFIC UNION
Bank & Trust Company

March 8, 1982

Arther Simon
Attorney at Law
294 Page Street
San Francisco, CA 94102

Dear Art:

This letter will formalize our telephone conversation concerning the possibility of Pacific Union Bank and Trust Company acting as trustee of a charitable trust to be established by the Public Utilities Commission. It is my understanding that the initial value of the trust would be approximately \$200,000.00. Disbursements of income or principal would be made during the year at the direction of the Commission, and would likely not be made more often than once per month.

It is further my understanding that it is desirable to have the account in fairly liquid form which would mean money market funds or short term bank CD's (including Pacific Union Bank & Trust Company CD's).

Our fee for these trustee's services would be five hundred dollars per year subject to increases based on ninety day written notice.

I hope this information is helpful. Please let me know if you need additional information.

Yours truly,



Larry E. Sargent
Vice President &
Senior Trust Officer