



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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October 17, 1979

ATTORNEY GENERAL OPINION NO. 79- 241

Mr. Charles M. (Chuck) Light
Sheriff of Miami County, Kansas
President - Kansas Sheriffs Association
Miami County Courthouse
Paola, Kansas 66071

Re: Religious, Charitable and Other Organizations --
Solicitation and Collection of Funds -- Registration
Requirements

Synopsis: The Kansas Sheriffs Association is not a charitable organization as defined by K.S.A. 17-1739(a), and under the facts presented, the advertising firm to be retained by the Association is not a "professional fund raiser" as contemplated by K.S.A. 17-1739(d). Thus, neither the Association nor the advertising firm are required to register with the Secretary of State under the provisions of K.S.A. 17-1739 et seq.

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Dear Sheriff Light:

You inquire of this office as follows:

1. Would the Kansas Sheriffs Association (hereinafter referred to as the "Association") as a tax-exempt organization, be a "charitable organization" under Kansas law? and

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2. Would a specified Atlanta, Georgia advertising company (hereinafter referred to as the "Firm") be a "professional fund raiser" under Kansas law?

The solicitation and collection of funds for charitable purposes are regulated by the provisions of K.S.A. 17-1739 et seq. The definitions applicable to such statutes are contained in K.S.A. 17-1739 which provides in pertinent part:

"(a) 'Charitable organization' or organization means any person who solicits and collects funds for charitable purposes or purposes alleged to be charitable . . .

"(b) 'Contribution' means the promise or grant of any money or property of value of any kind, including the promise to pay, except money or property received from any governmental authority. Reference to the dollar amount of 'contributions' in this act means in the case of promises to pay, or payments for merchandise or rights of any other description, the value of the total amount promised to be paid or paid for such merchandise or rights and not merely that portion of the purchase price to be applied to a charitable purpose.

. . . .

"(d) 'Professional fund raiser' means any person who for compensation or other consideration plans, conducts, manages, or carries on any drive or campaign in this state for the purpose of soliciting contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself out to persons in this state as independently engaged in the business of soliciting contributions for such purposes . . .

"(e) 'Professional solicitor' means any person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes from persons in this state.

"(f) 'Charitable purpose' means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose"

K.S.A. 17-1740(a) imposes requirements on charitable organizations, and prescribes in pertinent part:

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"Every charitable organization, except as otherwise provided in section 3 (17-1741) of this act, which solicits or intends to solicit contributions from persons in this state by any means whatsoever shall be a corporation organized under the laws of this state, and prior to any solicitation shall file with the secretary of state of the state of Kansas . . . a registration statement . . ."

K.S.A. 17-1744(a) provides in pertinent part:

"No person shall act as a professional fund raiser for a charitable organization required to register pursuant to section 2 (17-1740) of this act, or for any religious organization as described in paragraph 10 of section 3 (17-1741) of this act before he has registered with the secretary of state or after the expiration or cancellation of such registration or any renewal thereof . . ."

It thus appears the incorporation and registration requirements of K.S.A. 17-1740 apply if (1) an organization falls within the definition of a "charitable organization" and (2) there is a solicitation "by any means whatsoever" of a "contribution" as defined by K.S.A. 17-1739(b).

Additionally, you have described the Association as a non-profit Kansas corporation "intending to apply for tax exempt status under Section 501(c)(3) of the U.S. Internal Revenue Code of 1954, as amended (the "IRC")." It appears from your description that the clear intent of the Association is not charitable in nature, but is to serve an educational function for its law enforcement members and to promote better law enforcement. Furthermore, an invitation to become a "dues paying member" of an organization is not a solicitation of a "contribution," as the payment of annual dues are inherent in most organizations, and as such cannot be considered "contributions" per se. The particular tax-exempt status of the organization is immaterial in determining the application of the Kansas statutes herein considered, as such status is granted to "charitable" as well as "educational" organizations. Lending further support to this position is your statement:

"Like the Kansas Association, a number of these associations have recently taken steps to obtain tax exempt status under the IRC. In connection with this change, the associations tend to restate

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their purpose as being essentially to support public 'training and education.' A copy of the recently revised by-laws of the Kansas Association are enclosed herewith for your information. You will note the said by-laws do not contain any provisions relating to 'charitable purposes' such as providing its members, or anyone, with death, health, medical or other such type benefits."

Therefore, based on the facts you have presented, it is our opinion that the Association is not a charitable organization. As a result, the Firm which the Association contemplates retaining to assist in certain fund-raising efforts is neither a "professional fund raiser" nor a "professional solicitor," since the Firm will not solicit funds for "charitable purposes" or on behalf of a "charitable organization," as these terms are statutorily defined. Furthermore, notwithstanding the nature of the Association or the purpose for which funds for the Association are solicited, we do not believe the Firm would meet the statutory requirements for a professional fund raiser or solicitor under the facts you have presented.

You have described a plan under the questions raised in which the Association intends to increase or maintain its membership by seeking dues to support its executive offices through a mailing program conducted by the specified Firm. This Firm, we are given to understand, assists organizations by providing promotional materials in a package described as an honorary membership program. These materials consist of form letters, cards and "membership" information designed for the use of a state sheriffs' association and its solicitation of citizen members into an honorary/associate membership program. The Firm serves as printers of those form letters and mailers of this material to potential contributors, and it charges for its services on the basis of the number of form letters sent at a "per letter" rate, and the number of times a "mailing" is performed. No consultation or service charges are paid to the Firm, nor are flat fees or monthly retainers involved. Moreover, the Firm does not receive compensation, bonuses or similar financial remuneration based upon the amount of money contributed, or a percentage thereof, as a result of a solicitation "mailing," and at no time does the Firm solicit funds on behalf of its client or even receive money on behalf of its clients. Under the plan you have described, contributors would send their moneys directly to the Association.

Therefore, it is our opinion that the Firm is neither a "professional fund raiser" nor a "professional solicitor" within the purview of K.S.A. 17-1739. These statutory definitions on their face require

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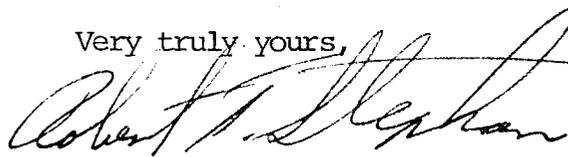
direct participation in the solicitation drive or campaign to constitute a professional fund raiser or solicitor. The Firm's involvement in the proposed fund raising project amounts to little more than providing the "paperwork" incidental to any solicitation campaign. Although your letter indicates that the materials the Firm provides have been used successfully by other state sheriffs' associations, the Firm points out that it does not guarantee results from its mailings, and cannot and will not assure the soliciting organization that the results of a "mailing" will even be sufficient enough to pay the "mailing" expenses. Accordingly, for the reasons herein cited, we must conclude that the legislature did not intend the definition of "professional fund raiser" or "professional solicitor" to be stretched to reach disinterested third parties who provide a service incident to a solicitation program, based upon the facts of this specific instance.

To reiterate, after consideration of the facts submitted and examination of the applicable Kansas statutes, it is our opinion the Kansas Sheriffs Association is clearly an "educational organization" and not a "charitable organization" within the meaning of the Kansas statutes, as evidenced by its Articles of Incorporation and By-Laws adopted thereby. Therefore, the Kansas Sheriffs Association is not required to register as a charitable organization under the provisions of K.S.A. 17-1740.

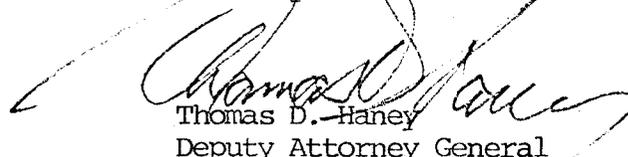
The registration requirements under the provisions of K.S.A. 17-1744 apply to any person acting as a "professional fund raiser" for a "charitable" or certain "religious" organizations. Since the Kansas Sheriffs Association is not a "charitable" or "religious" organization, the Firm mentioned in your aforesaid request is not required to register for this reason alone, nor would it, or the Kansas Sheriffs Association, be subject to the application of K.S.A. 17-1747. In addition, however, it is the opinion of this office the said Firm is not a "professional fund raiser" as it does not plan, conduct, manage or carry on membership drives, but is merely an independent contractor which performs mass mailing services as directed.

In conclusion, the specific questions set forth in your request are hereby answered in the negative.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Thomas D. Haney
Deputy Attorney General