

Connecticut Changes Its Charitable Fundraising Law

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Previously in this space, I have kept you abreast of legislative proposals floated by the U. S. Senate Finance Committee that could have a profound effect on the nonprofit sector, as well as the sector's response to those proposals. That inside-the-beltway activity continues unabated. The Panel on the Nonprofit Sector, convened by the umbrella group Independent Sector at the request of the Senate Finance Committee, recently issued its final report. While the report makes a number of suggestions for specific legislation, to a significant extent the Panel recommends that the nonprofit sector be encouraged to adopt best practices without the imposition of new federal rules directing how nonprofits should govern themselves.

It remains to be seen how receptive the Finance Committee will be to the Panel's recommended approach, particularly in light of what Chairman Charles Grassley said in April: "But the fact is that those who turn a blind eye to the problems in the charitable sector, or seek only a fig leaf of reform, potentially cause real long-term damage to non-profits. Those who are seeking real reforms to address the issues raised by the

[IRS] Commissioner and others today, will help ensure continued public confidence and support for non-profits." The Panel's report is available on the web at www.nonprofitpanel.org.

This column will address legislation closer to home that you should know about.

On June 7, 2005, Governor M. Jodi Rell signed Public Act 05-101. "An Act Concerning the Solicitation of Charitable Funds Act." First enacted in 1963, the Solicitation of Charitable Funds Act (the "SCFA") has two purposes: First, to provide a source of information for the public on the financial and programmatic activities of nonprofit organizations that seek the public's support. Second, to better enable the state to detect and, if necessary, prosecute those who abuse the public's trust in philanthropic institutions. The Department of Consumer Protection and the Attorney General's Office jointly enforce the law through their Public Charities Unit. Full disclosure here: I enforced this law for thirty years and was in charge of the Public Charities Unit before leaving state service at the end of 2002.

The SCFA applies to charitable organizations and public safety type organizations, such as police and firefighter unions, that solicit funds or anything else of value. The definition of "solicit" is very broad, encompassing all requests for support whether made by the charity directly or by another, such as the United Way, on the charity's behalf. With some exceptions, soliciting organizations must register and file financial reports with the state, which are available to the public. The SCFA also imposes requirements on professional fundraisers hired by charities to assist them.

Generally speaking, Connecticut charities have not had a problem complying with the law. One reason is that the Public Charities Unit has made a point of keeping the filing requirements as simple as possible and by recognizing that sometimes even the most well-intentioned charities will encounter situations that temporarily bring them out of technical compliance. Another is that the SCFA has remained largely unchanged for nineteen years. Charities and their professional advisors know and are comfortable with the routine.

Public Act 05-101 will challenge that comfort level for a while. The following are the highlights of the new law.

Registration. Charities will now have to re-register every year. Under the prior law, charities registered just once and the registration remained in effect indefinitely.

Annual financial report. There is no change to this requirement. Charities will continue to have to file a copy of their Internal Revenue Service return (Form 990, EZ, or PF) and, if gross revenue is in excess of \$200,000 for the year, audited financial statements prepared by a CPA.

Filing times. The general rule is that a charity must re-register and file the annual financial report within five months from the end of its fiscal year. That's the same time period under the old law for

the filing of the financial report. Charities may continue to request an extension of the filing deadline. However, under the old law the maximum extension that the Public Charities Unit could grant was three months. The new law allows an extension of up to six months, which is aligned with the maximum extension permitted by the IRS for filing Form 990. As before, the extension must be requested by the charity and is not automatic.

Fees. There will be a modest increase in the fee for charities that file their annual registration and annual report by the original due date or the extended due date. Under the old law, the annual fee was twenty-five dollars. It has now been increased to fifty dollars; not unreasonable considering that the fee was last increased in 1986. A more significant increase will be felt by charities that file late, either because they neglect to request an extension of time or, having received an extension, they still don't file on time. Presently, the late filing fee is a flat twenty-five dollars regardless of how late the report is filed. Henceforth, the late filing fee is twenty-five dollars for any month or portion of a month that the registration and annual report are overdue. This makes it even more important that charities request an extension of time in which to file if there is any possibility that the IRS return and the audit, if applicable, will not be ready within five months after the close of the fiscal year.

Charities that use paid solicitors. As before, charities that hire a commercial firm to solicit funds for them (usually by telephone) must co-sign with the solicitor a "Solicitation Notice" that contains information about the solicitation campaign, including the fee arrangement between the charity and the solicitor. The solicitor files the Notice with the Public Charities Unit. What's new is that the Public Charities Unit is now required to issue a press release and post on the Consumer Protection Department's web site "information describing the terms of the contract between the paid solicitor and the charitable organization, the

dates of such solicitation campaign and the percentage of the raised funds to be retained by the paid solicitor." This is designed to give the public ready access to information while the campaigns are on-going. It may also have the not unintended consequence of discouraging charities from using paid solicitors.

A careful reader of the previous paragraph may have noticed something odd about what the Public Charities Unit is required to publicize. In many cases, the "percentage of funds to be retained by the paid solicitor" is unknowable until well after the fundraising has stopped. Compensation arrangements between charities and their solicitors are often not percentage-based. In many cases, solicitors are paid on some other basis, such as a flat fee per completed call. Under those compensation arrangements, the amount that the charity pays the solicitor cannot be converted to a percentage until all the pledges are received and all the bills are paid.

Prohibited acts. The list of prohibited conduct has been expanded to make individuals personally liable for misusing a charity's assets. The Public Charities Unit has always had the ability to hold the charity itself and/or its Board members accountable when the charity willfully or recklessly engaged in a financial transaction that jeopardizes the mission of the charity or that diverted charitable assets to private hands. Lacking was the clear ability to prosecute civilly an executive director, comptroller, other employee, or a volunteer who perpetrates the deed without the Board's knowledge. The only recourse was to refer the matter to a State's Attorney for criminal prosecution; a process with inherent limitations. Now the Public Charities Unit can pursue, for example, an executive director who uses the charity's money for home improvements or a Las Vegas vacation.

The change from a one-time registration to an annual registration, as discussed above, has potential significance for charities beyond simply having to file another piece of paper with the state. Under the old law, if a charity failed to file its annual financial report on time it could still legally solicit

contributions because the registration remained in effect indefinitely. To stop a charity from fundraising, the Public Charities Unit had to sue the charity and ask a court to prohibit the charity from soliciting until the report is filed. A series of warnings was given to a delinquent charity to give it the opportunity to bring itself into compliance before the state sought to cut off its right to solicit. Under the new law, a charity's registration automatically lapses if it fails to re-register and file the financial report by the due date (five months after the end of the fiscal year) or, if an extension of time is requested, by the extended due date (up to eleven months after the fiscal year end). And it will be illegal to engage in any fundraising with a lapsed registration.

One other piece of legislation passed by the General Assembly this year is worth mentioning. Public Act 05-82, "An Act Allowing the Conduct of a Frog-Race Raffle in the Town of Windham" permits nonprofits to conduct one frog-race raffle each year. A frog-race raffle is a raffle "in which artificial frogs ... numbered consecutively to correspond with the number of tickets sold for such raffle, are placed in a naturally moving stream of water at a designated starting point and in which the ticket corresponding to the number of the first frog to pass a designated finishing point is the winning ticket." Don't let the title of the new law fool you. A frog race can be held in any Connecticut town. As originally introduced, the bill sought to "allow the conduct of a frog race raffle once each year in the town of Windham, the frog capitol of Connecticut." Its scope was later extended state-wide, which seems only fair.

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