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CONSUMER RIGHTS AND CHARITABLE SOLICITATIONS

§ 25. 1. Introduction

This consumer rights chapter describes the protections provided Maine consumers when being solicited for charitable contributions. It contains the following sections:

§ 25. 2. The Maine Charitable Solicitations Act

§ 25. 3. Disclosures To Consumers When Soliciting Charitable Contributions

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§ 25. 2. The Maine Charitable Solicitations Act

The Maine Charitable Solicitations Act¹ requires the registration and financial reporting of charitable organizations and the registration and bonding of professional fund-raisers. *Religious organizations are exempted from this Act.* To find out if a particular charity or fund-raiser is registered with the State you should contact the Department of Professional and Financial Regulation, Office of Licensing and Registration, State Offices Annex, Northern Avenue, Gardiner, ME 04345 (207)-624-8624, TTY, 207-624-8563, or www.maine.gov/pfr/olr/olr.disclme.htm. This Act's registration requirements are as follows:

A. Charitable Organizations

If a charitable organization intends to conduct charitable fundraising in Maine it must register with the Office of Licensing and Registration. A charitable organization does not have to file any registration statement with the Department of the Attorney General, except that private foundations are

¹ 9 M.R.S.A. §§ 5001-5016.

required by the IRS to file a copy of their Return of Private Foundation (form 99D-PF) with the Office of the Attorney General.

B. Raising Funds For A Specific Charitable Cause

If a party is not a charitable organization and is not working for a charitable organization but still wishes to raise money for a specific charitable cause, it must still be registered under the Charitable Solicitations Act, unless it qualifies as exempt (and even then it must still apply for the exemption). This Act defines a charity as “any person....that is or *holds itself out to be* organized or operated for any charitable purpose or that solicits, accepts or obtains contributions from the public for any charitable purpose.”² A charitable purpose is broadly defined, including “any charitable, benevolent, educational, philanthropic, humane, patriotic, or eleemosynary purpose.”³

Thus, if the solicitation would reasonably lead prospective donors to believe that the cause is charitable, the party would need to register as a charitable organization. In addition, if the party is earning a fee from the fundraising, it must register as a professional fundraiser.

C. Commercial Co-Venturer

If an organization sponsors special events to raise money for charitable organizations and receives a fee for its services then the Charitable Solicitations Act requires it to register as a “Commercial Co-Venturer.” An organization that is benefited in good will only is not required to register if the charity supervises and controls the proceeds from the special event. In order to register, it will have to pay a \$100 filing fee and post a \$25,000 bond. The Office of Licensing and Registration will provide a packet which includes the statute, regulations and filing forms.

D. Professional Fundraiser

An organization that performs fundraising services for a fee on behalf of a charitable organization must register as either a “professional fundraising” counsel or a “professional solicitor.” It must register with the Department of Professional and Financial Regulation and post bond.

E. Employees Of Charitable Organizations

If a person is employed by a charitable organization and conducts fundraising then that person is generally not deemed to be a professional solicitor or professional fundraising counsel. However, if this person’s salary or compensation is computed on the basis of funds to be raised or actually raised then that person is indeed acting as a professional solicitor or professional fundraising counsel and must register with the State and post bond.

§ 25. 3. Disclosures To Consumers When Soliciting Charitable Contributions

Under the Maine Charitable Solicitations Act both charitable organizations and professional fundraisers must make specific disclosures to consumers when they solicit funds. Failure to make such disclosures is a *per se* violation of the Maine Unfair Trade Practices Act⁴ and injured consumers can demand their money back (restitution). Further, charitable solicitations cannot deceive contributors as to the percentage of each donated dollar that will directly assist the needy. For example, it is not

² 9 M.R.S.A. § 5003(1).

³ 9 M.R.S.A. § 5003(2).

⁴ 5 M.R.S.A. § 207.

unusual for a professional fundraiser to keep for itself \$.85 of each donated dollar and pass on to the charity only \$.15. This is not illegal. But it is illegal for the fundraiser to misrepresent this fact. *See Illinois v. Telemarketing Associates, Inc.*, 123 S. Ct. 1829 (2003) and § 25.7, Consumer Remedies And Maine Law, in this Guide.

A. Mandatory Disclosures For Charitable Organizations

The Maine Charitable Solicitations Act requires charitable organizations which are soliciting on their own to disclose to potential contributors at the time of the solicitation, *but prior to the request for contributions*, the name and address of the charitable organization.⁵

B. Solicitation By A Professional Charitable Fundraiser

Professional fundraisers, in addition to providing the name and address of the charitable organization, must also provide the following two pieces of information:

- (1) The name and address of the professional fundraising counsel, professional solicitor or commercial co-venturer; and
- (2) The following statement: “(insert name) is a professional charitable fundraiser.”⁶

§ 25. 4. Considerations When Contributing To A Charity

Charitable solicitations are becoming evermore prevalent. Unfortunately, some solicitations are deceptive and bogus. Consumers should consider the following practical advice before donating to a charity:

- (1) Do not give cash. Always make contributions by check and make the check out to the charity, not to the individual collecting the donation. Never give out a credit card number over the phone.
- (2) Keep records of all your donations (receipts, canceled checks, and bank statements) so you can document your charitable giving at tax time.
- (3) Before making a donation, check out the charitable organization with the Department of Professional and Financial Regulation (207-624-8624), the Attorney General’s Consumer Protection Division (207-626-8849 between 9-12 noon) or the Better Business Bureau (207-878-2715). Of particular help is the Council of Better Business Bureaus’ Philanthropic Advisory Service, 4200 Wilson Blvd., Arlington, Virginia 22203 (703-276-0100, <http://www.give.org/reports/index.asp>). This organization monitors and reports on national and international soliciting organizations. At no cost, consumers can receive a single report on an individual charitable organization. You can also contact National Charities Information Bureau in New York City (212-929-6300) or the American Institute of Philanthropy (314-454-3040). You should also ask for a copy of the charity’s latest annual report. Finally, there is also an internet service called the Charity Navigator (www.charitynavigator.org) which lays out how a charity spends its money, how stable it is financially, and how it compares with similar groups. For example, Charity Navigator’s analysis of the Firefighters Charitable Foundation of Westerly, R.I. indicated that nearly 87% of the nearly \$5 million it raised in 2002 went for fund-raising expenses. Only \$555,000, or 11%, went for the foundation’s actual programs. Charity Navigator

⁵ 9 M.R.S.A. § 5012(1).

⁶ 9 M.R.S.A. § 5012(2).

gave this charity an “exceptionally poor” rating. See also www.guidestar.org, which provides a 10-step guide to choosing a charity.

- (4) Note carefully whether the solicitor makes the disclosures required by the Maine Charitable Solicitations Act (See § 25.3).
- (5) Do not give in to pressure to give money on the spot or allow a “runner” to pick up a contribution. The charity that needs your money today will welcome it just as much tomorrow.
- (6) When you are asked to buy candy, magazines, cards or tickets to a dinner or show to benefit a charity, be sure to ask what the charity’s share will be. You cannot deduct the full amount paid for any such item, as the IRS considers only the part above the value of the item to be a charitable contribution. For example, if you paid \$10 for a box of candy that normally sells for \$8, only \$2 can be claimed as a charitable donation.
- (7) Simply because a charitable organization is “tax exempt” does not mean that your contributions to it are tax *deductible*. The Internal Revenue defines more than 20 different categories of tax exempt organizations, but contributions to only a few of these categories are tax deductible. Principal among the “tax deductible” group is the 501(c)(3) category, broadly termed “charitable” organizations.
- (8) Always request literature from phone solicitors. If they want your pledge first, hang up or ask for a number so you can call them back.

§ 25. 5. Misuse Of Charitable Donations

Charities are prohibited from soliciting charitable donations and then using the money for purposes other than what was promised would be done. Maine law, at 5 M.R.S.A. § 194, requires the Attorney General to make certain that charities do not misuse these funds.⁷ This law states in part:

The Attorney General shall enforce due application of funds given or appropriated to public charities within the State and prevent breaches of trust in the administration of private charities.

This law applies to all charities, including religious organizations.

§ 25. 6. Police Solicitations

The Maine Legislature has repeatedly attempted to limit the ability of police organizations to solicit funds from the public. As the Legislature stated, police solicitations can be “inherently coercive” and can result in undermining the integrity of law enforcement. The current law in this area is that Maine police can solicit charitable contributions *only if* the money will *not* “tangibly benefit” law enforcement efforts.⁸ Thus, most police solicitations are now prohibited. Any money raised by police

⁷ On October 9, 1991, the Maine Superior Court, Kennebec County, approved a Consent Decree in the matter of *State of Maine v. International Union of Gospel Missions, Inc.* Pursuant to this Consent Decree, IUGM was prohibited from misrepresenting that a particular donation will provide for a definite amount of services (e.g., a donation of \$13.90 will feed ten hungry people). IUGM also agreed to pay to a Lewiston homeless shelter \$7,587 in furtherance of holiday solicitations in 1989-90. IUGM did not admit to any wrongdoing in entering into this Consent Decree.

⁸ 25 M.R.S.A. § 3702-A. See *Auburn Police Union, et al. v. Michael Carpenter, as Attorney General of the State of Maine*, 8 F. 3d 886 (1st Cir. 1993); *In the matter of Kennebec County Dive and Rescue Association, Inc.* Me. Super. Ct., Kenn. Cty. (January 24, 2003) (Maine Unfair Trade Practice Act Assurance of Discontinuance).

must be for a charity that is unrelated to law enforcement.⁹ Of course, any allowable police solicitations must also meet the requirements of the Maine Charitable Solicitations Act.¹⁰

In 2001 this law was amended to allow members of the public (but not police officers or their representatives) to raise money for law enforcement as long as they were not getting paid for their work or their expenses. This amendment is repealed on February 1, 2004.

Here are some examples of legal and illegal police solicitations:

A. Legal Solicitations

- (1) Recent lottery winners show up at the police chief's door with a big check. They say they want it to be used to purchase new police equipment. No one asked them for the equipment, and the money comes solely from their own pockets. *Solicitation? No.*
- (2) A police officer goes door-to-door asking for contributions to Special Olympics. None of the money pays for the officer's time and 100% of the money is donated to Special Olympics. Goodwill toward the officer and her department is enhanced. *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? Yes. Benefit tangible? No.*
- (3) A telemarketer calls residents for donations for a basketball game between police officers and local high school students to benefit Mothers Against Drunk Driving. A percentage of the money raised is paid to the telemarketer and the remainder is given to MADD. *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? No.*
- (4) Police officers are directly involved in a DARE fundraiser. Representation is made that funds will be used solely to purchase items for DARE students, e.g., educational materials, T-shirts, diplomas, and food. *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? No.*
- (5) A non-profit senior citizen's group distributes unattended "drop boxes" with a message that the group and the sheriff's office need help to educate seniors about fraud and abuse. All the money goes to rent space and purchase educational materials at seminars where law enforcement officers are among the presenters. *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? No.*
- (6) Police officers ask for donations to support the families of police officers who have died in line of duty. None of the money tangibly benefits living law enforcement officers or a law enforcement agency or association. *Solicitation? Yes. From general public? Yes. Benefit law enforcement? No.*
- (7) A hat is passed among officers and their families at a department picnic. The money goes to help an injured officer. *Solicitation? Yes. From general public? No.*

⁹ The Maine Attorney General's regulations describe the class of permissible solicitations as follows:

A solicitation of money for purposes completely unrelated to law enforcement, such as for a charity unrelated to law enforcement, does not confer a tangible benefit on law enforcement even if the solicitation effort increases good will toward law enforcement. For example, if police officers engage in solicitations of money for earthquake victims in South America, and if no law enforcement agency, officer, or association receives, is intended to receive, or is represented to receive any of the process of the solicitation, then that solicitation program will *not* tangibly benefit law enforcement.

Me. Dept of Att'y Gen. ch. 109.2: Rules Concerning Unfair Trade Practices and Charitable Solicitations by Law Enforcement Officers.

¹⁰ 9 M.R.S.A. §§ 5001-5016. *See above* §§ 25.2 - 25.3.

- (8) A community group solicits contributions to purchase equipment for a law enforcement agency. The group also holds bake sales and raffles to raise funds to help purchase the law enforcement equipment. *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? Yes. Benefit tangible? Yes. Solicitation by someone being paid for the work? No.*

B. Illegal Solicitations

- (1) A telemarketer tells a potential donor that her contribution will help her local police department, even though the funds go entirely to a charity and to pay the telemarketer. *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? Yes (represented). Benefit tangible? Yes. Solicitation by someone being paid for the work? Yes.*
- (2) A telemarketer tells potential donors that money is being raised for the DARE program conducted in local schools. The solicited funds are used to pay for the DARE officer's training. *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? Yes (to officer). Benefit tangible? Yes.*
- (3) Solicited funds are used to purchase an older police cruiser that is outfitted primarily for use in DARE lessons at the schools. The car is used on routine patrol whenever it is not being used for DARE. *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? Yes. Benefit tangible? Yes.*
- (4) A police union president contacts an accounting firm and says that the union "needs someone to do the books, but accounting services are not in the budget." *Solicitation? Yes. From general public? Yes. Benefit to law enforcement? Yes. Benefit tangible? Yes.*

§ 25. 7. Consumer Remedies And Maine Law

If a charitable organization or its professional fundraiser fails to adhere to the requirements of the Maine Charitable Solicitations Act, including registration, bonding, and disclosures to potential contributors, it has violated the Maine Unfair Trade Practices Act (5 M.R.S.A. §§ 205-A-214). Pursuant to 5 M.R.S.A. § 213, consumers can bring a private court suit to recover lost monies for such a violation. If they are successful they will also be awarded their attorneys' fees. *See* Chapter 3 of this Guide, Unfair Trade Practices.

Additionally, a charitable organization can violate the Unfair Trade Practices Act if it uses deceptive solicitation tactics (e.g., misrepresenting the reason for the fundraising or the use the donations will be put to.) Remember: religious organizations are exempt from the requirements of the Maine Charitable Solicitations Act. Further, a religious organization's fundraising efforts would probably not qualify as a "trade or commerce" and therefore would not fall under the requirements of the Maine Unfair Trade Practices Act.

Finally, the Attorney General has the authority to make certain that all charities, including religious organizations, properly use charitable donations and do not divert them to their own use or to uses different than those promised when soliciting the donations. *See* 5 M.R.S.A. § 194.

§ 25. 8. Answers To Frequently Asked Questions About Charitable Giving

A. If a charity is registered with the State, does that ensure its legitimacy?

No. Registration with the State is only a threshold step that is required before a charitable organization can engage in fund raising. It does not mean that the charity has been thoroughly investigated and pronounced honest. If a charity gives you its State registration number or a federal tax ID number as evidence of its legitimacy, it may be doing so because it has little else to offer in that regard. For a wider range of legitimate fundraising organizations and tips on giving wisely, go to:

- (1) American Institute of Philanthropy: www.charitywatch.org
- (2) Better Business Bureau: www.give.org
- (3) AARP: www.aarp.org/bulletin
- (4) Charity Navigator: www.charitynavigator.org
- (5) Guidestar: www.guidestar.org

See also § 25.4(3).

B. How can I be certain that I am being contacted by a legitimate charity, one that is going to use most of my money the way they say they are going to?

It is virtually impossible to establish that fact over the telephone. A charity that is going to misuse your donation will tell you whatever it thinks will ensure that you make a donation.¹¹ The best way to make sure that your money is used for the intended charitable purpose is to give to a well-established charity that you are personally familiar with and whose good works can be seen in your own community. People who know that they are going to see you at the grocery store, in church and at community functions are generally less likely to take advantage of your good will than someone who knows that they will never be confronted by you. Remember, charity begins at home.

C. What if I am tempted to donate money over the telephone?

Resist the temptation. Any organization that is anxious for your money today, will be just as anxious to receive it next week. Ask for printed literature about the organization that you can review at your leisure. If none is available, think twice about giving. The obvious exception to this rule is if the charity is a local one with which you are familiar.

D. Would it be best if I simply made a list of those charities that I want to contribute to and stick to that list?

Yes. Perhaps the best way for you to make sure that your charitable dollars are used to their fullest is to sit down once a year and decide which charities you would like to contribute to. Planning your giving in this manner puts you in control of your charitable giving and makes you less susceptible to spur of the moment decisions to give to this or that charity. While some small deviations from your giving plan in the course of the year are inevitable, by designating the bulk of your money to your favorite causes, you will be able to avoid the temptation to give to organizations that seem to promote your cause, but are otherwise unknown to you.

¹¹ See e.g., *State of Maine v. Maine Volunteer Firefighters Fund, Inc., et al.*, CV-02-138 (Me. Super. Ct., Ken. Cty., Sept. 5, 2002) (Studstrup, J.) (Consent Decree prohibited deceptive claims that charity was related to Maine Volunteer firefighters).