

N.D.A.G. Letter to Meier (Sep. 26, 1986)

September 26, 1986

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary Meier:

Thank you for your letter of September 4, 1986, regarding whether charitable organizations which sell food products to raise funds are exempted from the Charitable Organization's Soliciting Contributions Act of N.D.C.C. Ch. 50-22.

The pertinent provisions of N.D.C.C. Ch. 50-22 are as follows:

50-22-01. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1. "Charitable organization" means any benevolent, philanthropic, patriotic, or eleemosynary organization or one purporting to be such except organizations soliciting funds for institutions of higher learning, and organizations soliciting funds for churches operating and having a place of worship within the state. . . .
2. "Contribution" means the promise or grant of any money or property of any kind or value.

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6. "Solicitation" means the asking, seeking, appealing, requesting, directly or indirectly by means of mail, personal contact, written material, radio, television, news media, magazines or other periodicals, or any other means of communication, of money or property of any kind or value or pledges for the same.

50-22-02. LICENSE TO SOLICIT -- TERM --REVOCATION. No charitable organization shall solicit contributions from persons in this state by any means whatsoever without first having obtained a license from the secretary of state. . . . (Emphasis supplied.)

Experience tells us that neither a statute, rule, nor regulation can pragmatically cover every situation that may arise and, as a result, the official body required to act or make a decision or fashion a remedy must fill the interstices in accordance with those legal concepts, principles, or objectives which may apply to the situation and that are in harmony and legally compatible with the rule, regulation, or statute. State ex rel. Olson v. Bakken, 329 N.W.2d 575, 580 (N.D. 1983). This is the situation in the instant case as the precise issue involved here is not specifically covered in N.D.C.C. Ch. 50-22.

The primary purpose in interpreting statutes is to ascertain and carry out the legislative intent so expressed. Novak v. Novak, 24 N.W.2d 20 (N.D. 1946). Clearly, the express legislative intent is that all nonexempt charitable organizations soliciting contributions by any means whatsoever must obtain a charitable solicitation license.

In today's competition for the scarce charity dollar, a large number of charitable organizations use creative fundraising methods which include the sale of everything from food products to tickets for musical concerts. If charitable solicitation licensure were limited only to those charitable organizations making a request for donations, the end result would be that only a small number of charities would be licensed which would be contrary to the clearly expressed legislative intent.

Therefore, it is my opinion that nonexempt charitable organizations soliciting contributions by the sale of food items are required to comply with the charitable solicitation licensure requirements of N.D.C.C. Ch. 50-22.

Sincerely,

Nicholas J. Spaeth

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