

MAINE STATE LEGISLATURE

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Charitable Solicitations, Application (to Red Cross)
Federal Corporations, State Laws
State - Federal Relations

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December 2, 1977

The Honorable Barbara M. Trafton
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Trafton:

You have inquired whether the status of the American National Red Cross as a federal corporation exempts that organization from any of the requirements of the Maine Charitable Solicitations Act, 9 M.R.S.A. §5001 et seq. It is my opinion that a federal statute (36 U.S.C.A. §6) requiring the American National Red Cross to file a financial report with the Department of Defense is sufficiently similar to §5005 of the Maine law to require an exemption of the American National Red Cross from §5005. All other provisions of the Maine Charitable Solicitations Act would be applicable to the American National Red Cross.

The American National Red Cross is a federally chartered corporation and its purposes and general organization are detailed in federal statutes. See 36 U.S.C.A. §1 et seq. It is so closely related to the federal government in some of its functions that the United States Supreme Court has held it to be an instrumentality of the United States and declared it to be immune from state taxation levied on its operations. See Department of Employment v. United States 385 U.S. 355, at 358; Sturgis, "Legal Status of Red Cross," 56 Michigan L. Rev. 1.

The status of the American National Red Cross as a federal instrumentality does not give it total immunity from the application of state laws. So long as the state regulation does not conflict with or obstruct responsibilities of the organization imposed by federal statutes, the state regulation is valid. See Tribe, "Intergovernmental Immunities in Litigation, Taxation, and Regulation: Separation of Powers Issues in Controversies About Federalism", 89 Harvard L. Rev. 682, 702.

A review of federal statutes applicable to the American National Red Cross and the Maine Charitable Solicitations Act reveals only one instance of direct conflict, that of financial reporting. Federal statutes do not attempt to regulate fund solicitation in any manner. Moreover, the Maine statutes relating to registration, filing of contracts, unauthorized use of names and disclosure of percentage of contributions to be used for a charitable purpose do not hinder or obstruct the American National Red Cross in carrying out its federally mandated responsibilities which primarily concern war relief and obligations of the United States under several international treaties.

If you have any questions regarding this opinion, please do not hesitate to contact me.

Very truly yours,

Joseph E. Brennan
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JEB:js