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*Charitable Solicitations Class Agents
9 M.R.S.A. §5003*

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 12, 1978

Ms. Doris Hayes, Deputy
Secretary of State
State House
Augusta, Maine 04333

Dear Ms. Hayes:

This will acknowledge your opinion request of December 23, 1977, in which you inquire whether a class agent who solicits for the alumni fund of his college in the State of Maine and receives admission to athletic events and food and lodging once a year from the college would fall under the definition of professional solicitor in the Maine Charitable Solicitations Act (9 M.R.S.A. §5001 et seq.).

Professional solicitor is defined in the Act as any person who for financial or other consideration engages, employs, directs, or contracts with any other person to solicit contributions. Two questions arise as to whether the situation described by you would fit within the definition of professional solicitor. First, does the receipt of free admission to athletic events and free food and lodging once a year constitute "other consideration" for services in soliciting contributions. Second, is an individual who is performing solicitation efforts on behalf of his or her alma mater engaged or employed in soliciting contributions. We respond to both of these questions in the negative. It is clearly not the intent of the Maine Legislature that the Charitable Solicitations Act apply to the activities of an alumnus soliciting on behalf of an educational institution.

The term professional solicitor suggests that it is intended to apply to an individual who is at least substantially compensated for his time and his value to the organization in soliciting contributions. It is unlikely that it was the intent of the Legislature that the Act extend to individuals functioning primarily from motives of loyalty and commitment to educational institutions and who only incidentally receive minor gratuities and preferences in return. Hence, we would construe the term "other consideration" to mean reasonable compensation for effort expended.

In the same sense the words used by the Legislature to describe the relationship between the professional solicitor and the charitable organization definitely suggests that the relationship would be contractual, either one of direct employment or of a contract for services. The situation described by you does not appear to amount to an enforceable contract on the part of either party. It is rather a voluntary commitment of time on the part of an alumnus to an educational institution.

Under the circumstances, it is our opinion that the situation described by you does not bring a class agent within the definition of a professional solicitor found in 9 M.R.S.A. §5003.

Your further inquiry as to whether the names of persons may be used in a solicitation without the specific written consent of that person, 9 M.R.S.A. §5013, raises a more difficult question. This section of the Act is not limited to professional solicitors but provides that no person shall for the purpose of soliciting contributions from persons in this State use the name of any other persons without the specific written consent of the other person. In the situation described in the letter attached to your opinion request, the issue would appear to be whether names of other persons are used "for the purpose of soliciting contributions". Under the described circumstances, we would interpret the use of the names of other persons in such communication merely as efforts to pass on information among friends and not for the purpose of soliciting contributions. However, should explicit use of specific names be made for the purpose of encouraging contributions, it would be our opinion that 9 M.R.S.A. §5013 would apply.

If you have any further questions concerning this issue, we would be pleased to respond to them.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

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