

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1043

S. P. 317

In Senate, February 9, 1965

Referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

EDWIN H. PERT, Secretary

Presented by Senator Snow of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT Relating to Charitable Solicitations.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 22, c. 854, additional. Title 22 of the Revised Statutes is amended by adding a new chapter 854, to read as follows:

‘CHAPTER 854

CHARITABLE SOLICITATIONS

§ 3161. Definitions

1. Charitable organizations. “Charitable organizations” shall mean any group of benevolent, philanthropic, patriotic or eleemosynary person or persons purporting to be such.

2. Contribution. “Contribution” shall mean the promise or grant of any money or property of any kind or value, except payments by members of an organization for membership fees, dues, fines or assessments, or for services rendered to individual members if membership in such organizations confers a bona fide right, privilege, professional standing honors or other direct benefit.

3. Person. “Person” shall mean any individual, organization, group, association, partnership, corporation or any combination of them.

4. Professional fund raiser. “Professional fund raiser” shall mean any person who, for compensation or other consideration, plans, constructs, manages or carries on any drive or campaign in this State for the purpose of soliciting contributions for or on behalf of any charitable organization or any other person or who engages in the business of or holds himself out to persons in this State

as independently engaged in the business of soliciting contributions for such purposes. The bona fide officer or employee of a charitable organization shall not be deemed a professional fund raiser by that reason alone.

5. Professional solicitor. "Professional solicitor" shall mean any person who is employed or retained for compensation by any person or charitable organization to solicit contributions for charitable purposes from persons in this State.

§ 3162. Charitable organizations.

1. Registration; fee; solicitation by an unregistered charitable organization unlawful. Every charitable organization, except those granted exemption in subsection 2, which intends to solicit contributions from persons in this State or have contributions solicited on its behalf, shall annually file a registration application with the Secretary of State upon prescribed forms, and shall pay a fee of \$25 for each registration. Applications for initial registration shall include, in addition to the information required on the annual registrations, a fiscal report which shall truly and clearly set forth the financial status of the organization and its operation during the past year, including its assets and liabilities, its gross income, its expenses and the net income which inured to the benefit of the charity.

All applications for registration shall include:

- A. The name of the organization and the name or names under which it intends to solicit contributions;
- B. The names and addresses of the officers, directors, trustees and executive personnel of the organization;
- C. The addresses of the organization and the addresses of any offices in this State, or if the organization does not maintain an office, the name and address of the person having custody of its financial records;
- D. Where and when the organization was legally established, the form of its organization and its tax exempt status;
- E. The purposes for which the organization is organized and the purpose or purposes for which the contributions to be solicited will be used;
- F. Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;
- G. The names and addresses of any professional fund raisers who are acting or have agreed to act on behalf of the organization, and copies of any contracts or agreements entered into between the organization and the professional fund raisers.

The registration application shall be signed by the president or other authorized officer of the organization.

Registration applications, reports, professional fund raisers' contracts and other documents required to be filed pursuant to this chapter shall become public

records in the office of the Secretary of State. Registrations shall be complete on receipt by the Secretary of State of the completed application and fee.

Registration shall not be deemed an endorsement by the State of Maine of any person. Professional fund raisers, professional solicitors and charitable organizations may not advertise the fact of registration as an endorsement.

Any solicitations of contributions by an unregistered charitable organization or by persons acting for it or on its behalf except those organizations exempted under subsection 2, paragraphs A and B, shall be unlawful and shall be dealt with as provided in section 3164.

2. Exemptions.

A. This chapter shall not apply to any religious organizations or society which solicits funds solely from its own membership.

B. The following persons shall not be required to register:

(1) Educational institutions which by ruling of the United States Treasury Department are exempted from federal income taxation;

(2) Organizations which solicit solely from their own membership;

(3) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all the contributions collected without any deductions whatever are turned over to the named beneficiary for his use;

(4) Persons who solicit contributions solely from charitable foundations.

C. The following persons, unless they are also exempted under the other provisions of this subsection, shall register and shall be required to file annual registrations thereafter but shall not be required to pay a registration fee:

(1) Charitable organizations which do not intend to solicit and receive and do not actually receive contributions in excess of \$2,000 during a calendar year or do not receive contributions from more than 10 persons during a calendar year, if all of their functions, including fund raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of any officer or member, provided if the contributions raised are in excess of \$2,000 during any calendar year, they shall within 30 days after the date they have received total contributions in excess of \$2,000, register with the Secretary of State as required by section 3162;

(2) Organizations which are located solely within the limits of any single city or town and which solicit only within the city or town in which they are located;

(3) Community chests, united funds or other similar groups of affiliated charitable organizations soliciting for the benefit of local charitable organizations even though they may operate beyond the limits of a single city or town;

(4) Foundations which solicit solely for the benefit of religious organizations and educational institutions which are exempted by subsection 2, paragraphs A and B;

(5) Charitable organizations which receive allocations from a community chest, united fund or other similar groups of affiliated charitable organizations provided they are complying with the provisions of this chapter relating to registration and filing of annual reports with the Secretary of State and provided that the member organization does not otherwise solicit in its own name during the period in which it receives such allocations.

3. Reports required; registration to be cancelled for failure to file. Every charitable organization subject to this chapter, except those to which subsection 2, paragraphs A and B, apply, shall, within 30 days from the close of each calendar year, file with the Secretary of State a report of its operations for the year, which report shall include a financial statement covering such year, clearly setting forth the gross income, expenses and the net income which inured to the benefit of the charity. A group of affiliated charitable organizations may file one report for all the organizations in the group. The report shall include a statement of any changes in the information required to be contained in the registration form filed by such organization. The report shall be signed by the president or other authorized officer of the organization, who shall certify that the statements therein are true and complete to the best of his knowledge. The Secretary of State shall revoke the registration of any organization which fails to comply with this subsection. Reinstatement shall be granted upon the filing of the required report and payment of an additional late filing fee of \$20.

4. Records maintained. Every charitable organization subject to this chapter shall keep such permanent books of account or records as are sufficient to establish the information required by this chapter. The books and records required by this subsection shall be kept at all times available for inspection by officers of the State.

5. Certain telephone solicitations forbidden. No charitable organization shall conduct or make any solicitation by means of paid telephone operators whose principal duties are the conducting of such telephone solicitation.

6. Excessive payments forbidden. No charitable organization subject to this chapter shall pay or agree to pay a professional solicitor or a professional fund raiser a total amount in excess of 15% of any contributions received by reason of any solicitation, excluding reimbursement for expenses. For purposes of this subsection, the total contributions shall be computed by first discounting therefrom the actual cost to the charitable organization of goods sold or services provided to the public in connection with the solicitation of contributions. A determination by the Secretary of State in accordance with section 3163 that a contract or arrangement with a professional fund raiser or professional solicitor is in excess of 15% shall be final as against the charitable organization.

7. Charitable organization may be denied registration. The Secretary of State shall not issue a certificate of registration to any charitable organization which devotes less than 50% of its gross income to the charitable purposes of

the organization unless it is determined by him, after investigation and an opportunity for a hearing by the organization before an adverse decision is made, that it would be in the public interest to allow the organization to solicit funds from the public, notwithstanding the fact that the general expenses of the charitable organization exceed 50%.

8. Out-of-state organizations. Every charitable organization subject to this chapter which has its principal place of business without this State shall be deemed irrevocably to have appointed the Secretary of State as its agent for the service of any summons, subpoena, subpoena duces tecum or other process in any action or proceeding brought under this chapter.

§ 3163. Professional fund raisers and professional solicitors

1. License required; fee; bond; hearing on disapproval.

A. Every professional fund raiser and every professional solicitor shall, as a prerequisite to the solicitation of contributions within this State, have a currently valid license therefor issued by the Secretary of State. Applications for license shall be in the form prescribed by the Secretary of State and shall contain such information as the Secretary of State may require.

B. Each application shall be accompanied by a fee of \$10.

C. The applicant shall, at the time of making application, file with and have approved by the Secretary of State a bond in which the applicant shall be the principal obligor in the sum of \$5,000 with one or more sureties satisfactory to the Secretary of State whose liability in the aggregate shall, at least, equal said sum. Said bond shall run to the Secretary of State for the use of the State and to any person who may have a cause of action against the obligor of said bond for any malfeasance or misfeasance in the conduct of solicitation activities.

D. A license when granted shall run one year from date of issuance unless sooner revoked for cause under subsection 3 or section 3164. A license may be renewed by the filing of the application and bond and the payment of the fee as prescribed. Upon receipt of the application, bond, and fee, the Secretary of State shall issue a license unless in his discretion such issuance would be contrary to the public interest of the State. Any applicant who is denied a license may, within 15 days from the date of notification of such denial, request in writing a hearing before the Secretary of State, which hearing shall be held within 15 days from the date of such request.

2. Records filed with the Secretary of State. Every professional fund raiser and every professional solicitor shall file with the Secretary of State any contract or written statement of the nature of the arrangement to prevail in the absence of a contract between the professional solicitor or a professional fund raiser and the charitable organization, within 10 days after such contract or written arrangement is concluded. If the contract or arrangement does not provide for compensation on a percentage basis, the Secretary of State shall examine the contract to ascertain whether the compensation to be paid is likely to exceed 15% of the total contributions raised or received as a result of the contract or

arrangement. If the reasonable probabilities are that the compensation will exceed 15%, the Secretary of State shall notify the charitable organization and the professional fund raiser or professional solicitor of a probable violation of section 3162, subsection 2 and shall proceed as provided for therein.

3. Solicitors must carry and show authorization. Every person who solicits contributions within this State for an organization subject to this chapter shall have written authorization from such organization and shall show the authorization upon request. Every person to whom subsection 1 applies shall also show the license provided for in that subsection upon request. Noncompliance with this subsection shall result in revocation of license and in such further penalty as may be imposed under section 3164.

4. Out-of-state fund raisers and solicitors. Every professional fund raiser and every professional solicitor, whether an individual or a corporation, who solicits contributions within this State, and who is domiciled without the State, shall be deemed irrevocably to have appointed the Secretary of State as its agent for the service of any summons, subpoena, subpoena duces tecum, or other process, in any action or proceeding brought under this chapter.

§ 3164. Enforcement and penalties

1. Misdemeanor, injunction. Any charitable organization subject to this chapter and any professional fund raiser or professional solicitor who shall in any way violate this chapter shall be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or by both. In addition to the penalties set forth, the Superior Court shall have jurisdiction upon the complaint of the Attorney General to enjoin any solicitations of contributions or other acts being performed in violation of this chapter.'

Sec. 2. R. S., T. 22, c. 853, repealed. Chapter 853 of Title 22 of the Revised Statutes is repealed.