

1980 WL 121107 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 19, 1980

*1 Mr. Eric Wm. Pantsari
Director
Public Charities
State of South Carolina
816 Keenan Building
Columbia, South Carolina 29201

Dear Eric:

By your letter of February 22, 1980, you have asked the opinion of this Office on a question under the Solicitation of Charitable Funds Act (§§ 33-55-10 through 33-55-190, [Code of Laws of South Carolina](#), 1976, as amended).

You asked whether ‘professional fund-raising counsel’ and ‘professional solicitor,’ as defined by the Act, are required to register under § 33-55-120 even though they are not physically present within this state.

Section 33-55-120 says, ‘No person shall act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this chapter, unless he has first registered with the Secretary of State.’ This section requires the counsel or solicitor to file a bond with the Secretary of State. The section also allows the Secretary to approve or disapprove the application for registration.

The section does not say whether it applies to out-of-state fund-raising counsel and solicitors. Likewise, the definitions of ‘professional fund-raising counsel,’ ‘professional solicitor,’ and ‘charitable organization’ in the Act do not say whether out-of-state persons or organizations are covered. See § 33-55-20. (Note though that neither § 33-55-120 nor the definitions specifically exclude out-of-state persons.)

However, elsewhere in the Act out-of-state counsel and solicitors are specifically made subject to the Act: ‘Any charitable organization or professional fund-raising counsel or professional solicitor having a principal place of business without the State, or organized under and by virtue of the laws of a foreign state, soliciting contributions from people in this State, shall be subject to the provisions of this chapter. . . .’ § 33-55-150.

This section also names the Secretary of State as agent for service of process on out-of-state organizations. The purpose of such a section is to help regulate out-of-state as well as instate organizations: ‘To protect its citizens from fraudulent activities conducted outside of the state about two-fifths of the statutes regulating charitable solicitation deem a foreign-based or organized charity soliciting from persons in the state to have appointed a public official or department its agent for service of process in any action brought in connection with the statute.’ E. Fisch *et al.*, [Charities & Charitable Foundations](#) (1974) (emphasis added). See also [People ex rel Scott v. Police Hall of Fame, Inc.](#), 376 N.E.2d 665 (Ill. App. 1978).

In [People ex rel Scott](#) two Washington, D. C., professional fund-raising counsel, Helix and WIS (Helix for short), challenged the Illinois statute that names the Secretary of State as agent for service on out-of-state organizations (Illinois Rev. Statutes 1973, Chapter 23, paragraph 5105). Helix argued that § 5105’s failure to repeat ‘professional fund-raiser’ in certain provisions meant that the section wasn’t meant to cover such persons. The court dismissed this argument, saying that the introductory provision to the section clearly included ‘professional fund-raiser’ and that the whole section obviously applied to such persons. What is significant for your question is that Helix did not even try to challenge § 5105 on the basis that it was not intended to apply to

something—whether organization or fund-raiser—our-of-state. That is, Helix did not question the general intent of the section as applying to out-of-state entities. Helix instead relied on the technical argument that the omission of a certain term in some provisions meant that the whole section did not apply to that term.

*2 The Scott court also talked about its ability to invoke jurisdiction over Helix on the charge of common law fraud. This question is not the same as, but is related to, your question. The court said that Helix's contacts in Illinois—1) mailing literature to residents, 2) using the name of a defunct Illinois organization as an appeal and 3) meeting in Illinois with the charities to negotiate—all were sufficient 'minimum contacts' for due process (see [International Shoe Co. v. Washington](#), 326 U.S. 310 [1945]). The court didn't specifically say that use of the mails only would be sufficient 'minimum contacts,' but that question was not raised.

Lastly, other sections of our Act imply that the Act applies to out-of-state organizations, fund-raising counsel and solicitors. See, for instance, § 33-55-130, which allows the Secretary of State to accept information filed by counsel and solicitors in other states. That section also allows the Secretary to exempt from registration out-of-state charitable organizations if they have registered in their home states.

The cardinal rule in construing a statute is to determine the intent of the Legislature. 17 S.C. Digest, 'Statutes' Key 181. In determining this intent one must look at the whole Act, [City of Columbia v. Niagara Fire Ins. Co.](#), 249 S.C. 388, 154 S.E.2d 674 (1967), and arrive at a construction that is reasonable and not absurd. [State v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964).

The evident intent of this Act is to regulate solicitation within South Carolina. Obviously, a person outside of South Carolina may solicit within South Carolina, by television, radio, newspaper, mail or telephone. The only reasonable construction of the Act as a whole is that it applies to persons and organizations, regardless of where they are, who solicit within this state.

Therefore, it is the opinion of this Office that 'professional fund-raising counsel' and 'professional solicitors,' as defined by the Act, are required to register under § 33-55-120 regardless of whether these persons are physically present within the state.

Sincerely,

Eugene W. Yates, III
Assistant Attorney General

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