

1981 S.C. Op. Atty. Gen. 94 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-72, 1981 WL 96598

Office of the Attorney General

State of South Carolina

Opinion No. 81-72

August 12, 1981

**SUBJECT: Charitable Solicitation, Charitable Organizations, Secretary of State**

**\*1** (1) A civic club is a 'charitable organization' as defined by the Solicitation of Charitable Funds Act, §§ 33-55-10 through 33-55-190, Code of Laws of South Carolina (1976).

(2) When a civic club undertakes a fund-raising project in which it makes no specific charitable appeal, it must nevertheless register with the Secretary of State under § 33-55-40.

TO: Eric Pantsari  
Administrator  
Public Charities  
Office of the Secretary of State

**DISCUSSION:**

You have asked whether a civic club, when it raises money by means of a sports event, circus, beauty pageant, etc., must register under § 33-55-40, even though the club makes no specific appeal for charity, i.e., 'The proceeds from this event will benefit crippled children.' The examples you give of civic clubs are the Kiwanis and Jaycees. I do not have enough facts to tell whether these specific organizations are covered by the Act. I will, however, give you guidelines on whether civic organizations in general are covered by the Act.

**QUESTION:**

(1) Is a civic club a 'charitable organization' as defined by the Act?

**OPINION:**

'Charitable organization' is defined as one 'which is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, or eleemosynary organization or any person which solicits or obtains contributions solicited from the public for charitable purposes . . . .' Section 33-55-20(1). ('Person' is defined broadly, to include any 'organization'. Section 33-55-20(2).) 'Charitable purpose' is also defined, as: 'Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.' Section 33-55-20(10).

These definitions are quite broad. They are also, in part, circular; 'charitable purpose' is defined as 'charitable purpose' in § 33-55-20(10); and, as to § 33-55-20(1), 'eleemosynary' is often used interchangeably with 'charitable' ([15 Am. Jur.2d Charities, § 3](#); see [Gilbert v. McLeod Infirmary](#), 219 S.C. 174, 64 S.E.2d 524, 528 [1951]). 'Benevolent' carries a broader meaning than 'charitable': 'benevolence' is judicially defined as "any acts dictated by kindness, good will, or disposition to do good". E. Fisch, [Charities and Charitable Foundations](#), § 2 at 2 (1974); see [15 Am. Jur.2d Charities § 4](#).

Because of the circularity of the definitions in the Act, we may look at a generally accepted definition of 'charitable' or 'charity'. A 'charity' is a non-profit trust, corporation or unincorporated association operated for the benefit of indefinite persons and devoted to purposes beneficial to the community. Fisch, supra, § 1; see Harter v. Johnson, 122 S.C. 96, 115 S.E. 217, 220–21 (1922).

A 'civic club' would be one 'concerned with or contributory to general welfare and the betterment of life for the citizenry of a community or enhancement of its facilities; esp: devoted to improving health, education, safety, recreation, and morale of the general public through nonpolitical means . . . .' Webster's Third New International Dictionary, 'civic' (sense 3) (1976).<sup>1</sup> (Note, though, that this definition does not include the feature of non-profit operation, which would have to be present for a club to be considered a 'charitable organization'. See the definition of 'charity', above.)

\*2 Therefore, it appears that a 'civic club' would be a 'charitable organization' as defined by the Act. To determine whether a specific club is a charitable organization, one must first look at the club's articles of incorporation and the statute under which the club was formed. Fisch, supra, § 3. The character of a club is, however, ultimately determined by the way in which it is conducted, not by what its purposes are as recited in the articles of incorporation. Id.; see Crowley v. Bob Jones University, 268 S.C. 492, 234 S.E.2d 879, 881 (1977).

#### QUESTION:

(2) If such a club were to undertake a fundraising project in which it made no specific charitable appeal, must it register with the Secretary of State under § 33–55–40?

#### OPINION:

Section 33–55–40 requires '[e]very charitable organization' that intends to 'solicit contributions' within the state to register with the Secretary of State, giving him information about its officers, its tax-exempt status, the purpose of solicitation, manner of solicitation, etc. 'Contribution' is defined broadly, as '[t]he promise or grant of any money or property of any kind or value', except for certain membership dues. Section 33–55–20(3).

Section 33–55–40 thus mentions no purpose to which the contributions might be put that would exempt the charity from registering. Neither does the section mention a manner of solicitation that would exempt the charity. The section merely says that any charitable organization soliciting contributions must register. So, it appears that anytime a 'charitable organization' solicits contributions, it must register.<sup>2</sup>

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#### Footnotes

- 1 See also decisions interpreting Internal Revenue Code § 501(c)(4) [26 U.S.C. S. § 501(c)(4)], which exempts from income tax '[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare . . . .' (id.): e.g., U.S. v. Pickwick Electric Membership Corp., 158 F.2d 272 (6th Cir. 1946).
- 2 Unless, of course, it is exempted from registration under § 33–55–60.

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