

1975 WL 29816 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 15, 1975

***1 Re: Civil Air Patrol's Status Under 'South Carolina Solicitation of Charitable Funds Act'**

Mr. Ronald H. DeBarry
Administrator
Public Charities
816 Palmetto State Life Building
Columbia, SC 29201

Dear Mr. DeBarry:

You have requested an opinion from this Office as to whether or not the Civil Air Patrol is required to register under the South Carolina Solicitation of Charitable Funds Act, codified as Sections 67-91, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended). Pursuant to the Charitable Solicitations Act, all charitable organizations which solicit or obtain contributions for charitable purposes must register with the Secretary of State's Office. A 'charitable organization' is defined as:

A person 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 after July 1, 1972. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the State for a charitable organization which has its principal place of business outside the State shall be a charitable organization for the purposes of this chapter.

The Civil Air Patrol is a non-stock, non-profit organization, incorporated pursuant to [36 USC Section 202](#). As a benevolent corporation, the Civil Air Patrol has a 501(c)(3) Internal Revenue Service Tax exemption. Although the Civil Air Patrol is a volunteer civilian auxiliary of the United States Air Force (See [10 USC Section 9441](#)) CAP is in no way managed or controlled by United States Air Force. Furthermore in the case of [Pearl vs. United States, 230 F.2d 243 \(1956\)](#) the United States Court of Appeals for the Tenth Circuit specifically found that:

The Civil Air Patrol was created by the act of July 1, 1946, and declared to be a body corporate, with perpetual succession and the powers enumerated in Section 5, including the power to sue and be sued, to acquire and hold property, to accept gifts, legacies and devises, and to do all acts and things necessary and proper to carry into effect the objects and purposes of the corporation. Its objects and purposes are set out below.

It is clear the primary purpose of the organization was to encourage private citizens in the voluntary contribution of their efforts and services for the public welfare. This, it was contemplated, included development of aviation and maintenance of air supremacy through the education and training of its senior and cadet members, the fostering of civil aviation in local communities and the ultimate providing of an organization of private citizens with adequate facilities to assist in meeting local and national emergencies. The corporation had 'no power to issue capital stock or engage in business for pecuniary profits or gain, its objects and purposes being solely of a benevolent character and not for the pecuniary profit or gain of its members.' These provisions indicate, if they do not compel the conclusion, that the Civil Air Patrol was chartered as an independent, non-governmental entity. [Emphasis supplied.]

***2** Consequently, it is apparent that Civil Air Patrol is not a quasi governmental entity of the United States Government.

Therefore, if the Civil Air Patrol is to be exempt from registration under the Charitable Solicitations Act, it must be exempt under one of the provisions found in Section 67-95, CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended). The only possible exemption for the Civil Air Patrol is found in Section 67-95(4). Although CAP does not intend to solicit contributions, as it states in its application for exemption from registration under the Solicitation of Charitable Funds Act, the Patrol receives more than \$2,000.00 in contributions yearly. Although the application does not so state, I must assume that this \$2,000.00 in contributions is from more than 10 contributors. Therefore, CAP is not qualified for exemption under Section 67-95(4). It is the opinion of this Office that Civil Air Patrol must register with the Secretary of State's Office pursuant to the solicitation of Charitable Funds Act.

A further question is at what level will the Civil Air Patrol be required to register. The Civil Air Patrol is set up as a corporation, and therefore, should register as a corporation.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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