

Charitable solicitation, professional fund raisers

Number: INFORMAL

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Mr. Robert Preston
Director of Fundraising
Florida Police Benevolent Association
5114 Okeechobee Boulevard, Suite 201
West Palm Beach, Florida 33417

Dear Mr. Preston:

Thank you for letter expressing your concern about a solicitation letter that has been circulating in Arkansas. The letter appears to come from a California entity called the Christian Children's Crusade (CCC) and seeks to recruit fund-raiser telemarketers, promising to pay them fifty percent of every donation made. In addition, the letter states that while "its pretty much being self-employed, you would work at home on your own schedule and be your own boss, however you would be an employee of CCC, otherwise you would be a professional fund-raiser." The letter further states:

"We furnish the calling guide/script and it's a big plus to be able to tell people . . . that you are not a professional solicitor calling but a member of a church, (employees are associate church members if they wish, its optional), and 100% of the donations go to the charity and the funds raised help children locally"

Attorney General Butterworth has asked me to respond to your letter.

While this office is precluded from formally commenting upon this matter,[1] I would note that Chapter 496, Florida Statutes, defines the term "professional solicitor" to include a person who, for compensation, performs for a charitable organization or sponsor any service in connection with which contributions are or will be solicited in this state by the compensated persons.[2] Although the statute exempts employees of a charitable organization from the term "professional solicitor," the individual must, in fact, be a bona fide employee of the charitable organization.[3]

If an individual is a professional solicitor, he or she must register with the Department of Agriculture and Consumer Services as provided in section 496.410, Florida Statutes. In addition, the Solicitation of Contributions Act prohibits any person in connection with the planning, conduct or execution of any solicitation or charitable or sponsor sales promotion to, employ in any solicitation any device, scheme, or artifice to defraud or obtain a contribution by means of "any deception, false pretense, misrepresentation, or false promise." [4]

The Department of Agriculture and Consumer Services is authorized to impose administrative penalties for violation of Chapter 496, Florida Statutes.[5] An act or practice which violates sections 496.401-496.424, Florida Statutes, constitutes an unfair and deceptive practice or unfair method of competition in violation of Part I, Chapter 501, Florida Statutes, and is, therefore,

subject to the penalties and remedies provided for such violations.[6] Moreover, section 496.417, Florida Statutes, provides that except as otherwise provided in sections 496.401-496.424 and in addition to any administrative or civil penalties, a violation of any of these statutes constitutes a felony of the third degree for a first offense and a felony of the second degree for a second or subsequent conviction. In addition, this office has the authority to bring a civil action in circuit court to enforce the provisions of sections 496.401-496.424, Florida Statutes.

Thank you for bringing this letter to this office's attention. Should you have any information that such a letter is being circulated within this state, please let us know. In light of the primary responsibility of the Department of Agriculture and Consumer Services in this area, I am also forwarding a copy of your letter and attachment to that department for its review.

Sincerely,

Joslyn Wilson
Director, Division of Opinions
Assistant Attorney General

JW/tgk

Enclosures

[1] See s. 16.01(3), Fla. Stat., and this office's Statement Regarding Attorney General Opinions, copies of which are enclosed for your review, which discuss the authority of the Attorney General to render opinions to public officials on questions of law relating to the public official's own duties.

[2] See s. 496.404(19), Fla. Stat.

[3] Section 496.403, Fla. Stat., removes bona fide religious institutions from the provisions of ss. 496.401-496.424. Section 496.404(20), Fla. Stat., however, defines "religious institution" to mean "any church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and includes those bona fide religious groups which do not maintain specific places of worship." "Religious institution" also includes any separate group or corporation which forms an integral part of a religious institution which is exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, and which is not primarily supported by funds solicited outside its own membership or congregation.

[4] See s. 496.415(13), Fla. Stat. And see, subsections (16) and (17) of s. 496.415 respectively stating that it is unlawful to fail to apply contributions in a manner substantially consistent with the solicitation and to fail to identify the professional relationship to the person for whom the solicitation is being made.

[5] See s. 496.419(4) and (5), Fla. Stat.

[6] Section 496.416, Fla. Stat. *And* see s. 496.424, Fla. Stat., authorizing the department to adopt rules to effectuate the provisions of ss. 496.401-496.424, Fla. Stat.