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## CHARITABLE SOLICITATION ACTS—AN ATTEMPT TO CURB CHARITY CHEATS

Charity is the fourth largest industry in the country,<sup>1</sup> with total contributions for all causes estimated by The American Association of Fund Raising Counsel, Inc. at 10.6 billion dollars in 1964.<sup>2</sup> Not only are Americans giving more than ever before,<sup>3</sup> but the percentage of family income contributed has risen twenty-five per cent from 1950 to 1964.<sup>4</sup> Predictions are, that by 1970, Americans will be giving some fifteen billion dollars a year to charitable agencies.<sup>5</sup>

The American public has traditionally demonstrated its desire to help the needy and the sick. Unfortunately our citizens have not always been as wise as they have been generous. This was illustrated by an incident in a New York City bank. A mother had deposited the contents of her son's coin bank, but had forgotten to take the container with her when she left. Upon her return an hour later she discovered the coin bank standing where she had placed it, but already half filled with small coins contributed by "givers" who felt the urge to give, though there was not the slightest indication of a cause.<sup>6</sup> This anecdote demonstrates Americans' eagerness to contribute, but this same eagerness tends to make this field a playground for the unscrupulous. The extent to which charity racketeers operate is highly underestimated by the contributing public. Nationally about one per cent or one hundred million dollars of the billions contributed annually ends up in the pockets of fraudulent fund raisers.<sup>7</sup>

A patent example of the fraud which occurs in the area of solicitations was demonstrated in *State v. Kline*,<sup>8</sup> where a worthwhile cause was exploited by unconscionable administrators of the Sister Kenny Foundation. The Foundation was incorporated in Minnesota in 1943. Prior to the early 1950's the fund was managed in a sound businesslike manner,<sup>9</sup> however,

<sup>1</sup> Forer, *Relief of the Public Burden: the Function and Enforcement of Charities in Pennsylvania*, 27 U. PITT. L. REV. 751, 755 (1966).

<sup>2</sup> AMERICAN ASSOCIATION OF FUND RAISING COUNSEL, INC., GIVING U.S.A. 5 (1965).

<sup>3</sup> *Ibid.* Americans gave 5.4 billion dollars in 1954. The period from 1954 to 1964 saw an increase of almost 100%.

<sup>4</sup> See Chicago Daily News, Nov. 1, 1965, p. 47, col. 3.

<sup>5</sup> CUTLIP, FUND RAISING IN THE UNITED STATES 478 (1965).

<sup>6</sup> ANDREWS, PHILANTHROPIC GIVING 160 (1950).

<sup>7</sup> But see *id.* at 163, where it is pointed out that no authoritative figure can be given for the annual take of charity rackets, but the figure 100 million dollars is cited.

<sup>8</sup> 266 Minn. 372, 124 N.W.2d 416 (1963). This case is also known as the *Sister Kenny Case*.

<sup>9</sup> CUTLIP, *op. cit. supra* note 6, at 461-62.

from 1952 through 1959 the foundation received \$30,674,000 from public gifts and of this sum \$16,260,000 was used to finance fund raising, public relations, and administrative overhead.<sup>10</sup> In the *Kline* case, prosecutions were successful on the state level for grand larceny and on the federal level<sup>11</sup> for violating the postal law provisions relating to frauds and swindles.<sup>12</sup> Generally, in state prosecutions such conduct is not encompassed within the existing common law crimes such as false pretenses and embezzlement.<sup>13</sup> For this reason, an examination should be made of present day legislation and its effectiveness.

#### LEGISLATIVE ENACTMENTS OUTSIDE OF ILLINOIS

As any charity fund raiser will admit, it costs money to raise money. However, if the cost is too great, the subject can change from charities to rackets. As a result, the last thirty years have witnessed an increased amount of legislation to establish safeguards for residents of communities against charlatans and charity cheats.

The ultimate responsibility for the protection of the public from unscrupulous fund raisers rests in the local government. Recognizing this responsibility, New York, a pioneer in this field, enacted comprehensive legislation in 1954 to regulate charitable solicitations.<sup>14</sup> The New York law is primarily a registration statute; solicitations by unregistered organizations are deemed to be a continuing fraud on New York citizens and the Attorney General is authorized to bring actions to enjoin violations.<sup>15</sup> The purpose of the New York statute is "to regulate currently the operation of organizations which are now engaged, or now purport to engage, in charitable activities and which violate the law by failing to register or by engaging in what is tantamount to fraudulent solicitation."<sup>16</sup>

To date, twenty-seven states and the District of Columbia have enacted statutes controlling solicitation of charitable gifts.<sup>17</sup> The requirements of

<sup>10</sup> CUTLIP, *op. cit. supra* note 6, at 462.

<sup>11</sup> U.S. v. Kline, 205 F. Supp. 637 (D. Minn. 1962).

<sup>12</sup> Frauds and Swindles, 18 U.S.C. § 1341 (1964) which states in essence that "whoever, having devised . . . any scheme . . . to defraud, or for obtaining money or property by means of fraudulent pretenses . . . knowingly causes to be delivered by mail . . . any such matter or thing, shall be fined not more than \$1,000, or imprisoned not more than five years, or both."

<sup>13</sup> Forer, *supra* note 1, at 763, n. 44.

<sup>14</sup> N.Y. SOC. WELFARE LAW art. 10-A, §§ 481-483a.

<sup>15</sup> N.Y. SOC. WELFARE LAW art. 10-A, § 482-k4.

<sup>16</sup> Green v. Javits, 149 N.Y.S.2d 854, 856, 1 A.D.2d 342, 343 (1956).

<sup>17</sup> AMERICAN ASSOCIATION OF FUND RAISING COUNSEL, INC., *op. cit. supra* note 2, at 69. States having laws controlling some degree of solicitation: Arkansas, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts,

these statutes are not uniform, in that some statutes require a license or registration for solicitation,<sup>18</sup> some require filing of financial reports,<sup>19</sup> and some require registration of professional fund raisers and counseling firms.<sup>20</sup> In most states, exemptions from these laws are provided for religious organizations and in some states for veterans' organizations and educational institutions.<sup>21</sup>

Perhaps the most effective legislation that exists today is the Los Angeles Municipal Code.<sup>22</sup> This ordinance provides that all organizations must file a notice of intention to solicit prior to conducting any charitable appeal within the city.<sup>23</sup> These organizations are then investigated and,<sup>24</sup> if they comply with the standards of the Code, are issued information cards. These cards contain data taken from the past experience of the agency and must be presented to the prospective donor or enclosed in any letter of solicitation.<sup>25</sup> A report of the results of solicitation must be submitted indicating the amount of receipts and the expenses of solicitation.<sup>26</sup> To maintain a high standard of fund raising, certain policies have been established. These policies allow fifteen percent of the total receipts as the maximum percentage of solicitation expenses,<sup>27</sup> and ban undesirable methods of solicitations

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Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, Wisconsin, and also the District of Columbia.

<sup>18</sup> *Op. cit. supra* note 2, at 69-70. States where license or registration for solicitation is required are: Arkansas, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Massachusetts, Minnesota, Michigan, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, and also the District of Columbia.

<sup>19</sup> *Op. cit. supra* note 2, at 70. States where financial reports of soliciting organizations must be filed or available for inspection are: Arkansas, California, Connecticut, Florida, Georgia, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Nevada, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Wisconsin, and also the District of Columbia.

<sup>20</sup> *Ibid.* States where professional fund raisers and counseling firms must register or file bond are: Arkansas, Connecticut, Georgia, Illinois, Massachusetts, New York, Ohio, Oklahoma, Pennsylvania, and Wisconsin.

<sup>21</sup> *Ibid.*

<sup>22</sup> LOS ANGELES, CAL., MUNICIPAL CODE ch. 4, art. 4.

<sup>23</sup> Letter from Fern Jellison, General Manager, Dept. of Soc. Service, Los Angeles, Cal. to Robert Nix, Chief of Charitable Solicitations Division, Office of Attorney General, State of Illinois, May 12, 1965, copy on file with the *De Paul Law Review*. See 1965 LOS ANGELES CAL., SOCIAL SERVICE DEPT. ANN. REP. 6.

<sup>24</sup> Letter *op. cit. supra* note 23; Report *op. cit. supra* note 23, at 7.

<sup>25</sup> Letter *op. cit. supra* note 23; Report *op. cit. supra* note 23, at 8.

<sup>26</sup> Report *op. cit. supra* note 23, at 9.

<sup>27</sup> Report *op. cit. supra* note 23, at 11. See generally NATIONAL HEALTH COUNCIL, VIEWPOINTS ON STATE AND LOCAL LEGISLATION REGULATING SOLICITATION OF FUNDS FROM THE PUBLIC 12 (1965) in which the problem of limitations on amount of payments for solicitation activities is discussed.

such as use of boxes or receptacles in public places, use of children to solicit, sending of unordered merchandise, and tag day street sales.<sup>28</sup>

As a result of its pioneering vigilance, Los Angeles saves its citizens millions of dollars every year by excluding organizations which do not meet its rigid standards. For example, the National Kids Day Foundation which raised \$4,000,000 throughout the country was not allowed to solicit within the city.<sup>29</sup> Later it was learned that no direct aid ever reached a child. In addition, the National Cancer Hospital which solicited \$630,000 in a country wide appeal was also unable to comply with Los Angeles Standards and thus was not allowed to solicit. Upon investigation it was shown that there was no such hospital.<sup>30</sup>

#### ILLINOIS SOLICITATION ACT AND ITS CRITICISMS

In 1963, Illinois passed an act to regulate solicitation and collection of funds for charitable purposes. This act was patterned partly after the New York and Minnesota statutes.<sup>31</sup> The Illinois statute<sup>32</sup> requires registration of professional fund raisers and organizations who intend to solicit within the state and also requires that an accounting be made to the Attorney General. A violation of the provisions of this act is a misdemeanor.<sup>33</sup> The strength of the Illinois act does not lie in its punitive powers but in the power of the Attorney General, who is a necessary party to these proceedings, to enjoin any charitable organization using "any device, scheme, or artifice to defraud. . . ."<sup>34</sup>

Since the passage of the Illinois Solicitation Act there have been relatively few prosecutions or injunctions. The cases which have come within this act have predominately dealt with excessive administration and overhead costs. The act does not specifically regulate the amount which may be spent on administration and overhead costs;<sup>35</sup> however, the deciding factor seems to rest upon a principle originating from the New York courts which have held that administrative and overhead expenses ap-

<sup>28</sup> Report *op. cit. supra* note 23, at 11.

<sup>29</sup> Bloom, *How Much for Charity*, Chicago's American, Nov. 25, 1962, (American Weekly Magazine), p. 4, col. 1.

<sup>30</sup> *Ibid.*

<sup>31</sup> News from William G. Clark, Attorney General, State of Illinois, p. 2, Oct. 14, 1963. Illinois, New York, and Minnesota each require a license or registration for solicitation and the filing of financial reports of soliciting organizations, but Minnesota does not require registration of professional fund raisers as do Illinois and New York.

<sup>32</sup> ILL. REV. STAT. ch. 23, §§ 5101-5114 (1965).

<sup>33</sup> ILL. REV. STAT. ch. 23, § 5111(e) (1965).

<sup>34</sup> ILL. REV. STAT. ch. 23, § 5109(c) (1965).

<sup>35</sup> Forer, *supra* note 1, at 763, n. 44. The author points out that "no solicitation act limits the amount which may be spent on fund raising and overhead."

proaching fifty percent of the amount solicited constitute a fraud on the contributing public.<sup>36</sup>

William G. Clark, Attorney General of Illinois, has stated that his office intends to follow the New York rule in regard to enjoining further solicitations by charities having excessive administration and overhead expenses.<sup>37</sup> In addition Clark has set forth the "Two Check Test" as a guide to charitable contributions.<sup>38</sup> This test is based upon the supposition that if a person intended to make a donation of \$10.00 to charity and was required to write one check for fund raising and administrative costs of \$8.60 and the other check for actual objects of the charity for \$1.40, he would not make the contribution at all.<sup>39</sup>

These guides were applied in *People ex rel. Clark v. Foundation for Asthmatic Children at Tucson, Inc.*<sup>40</sup> In this case, the Attorney General was able to enjoin further solicitation when it was revealed that less than 15 per cent of the total amount collected was used for the care, treatment, and schooling of asthmatic children.<sup>41</sup> Similarly in *People ex rel. Clark v. The Greater Chicago Police Officers Ass'n of America*,<sup>42</sup> wherein only thirteen cents of each dollar paid for a ticket for a circus benefit went to the intended beneficiaries while the remaining eighty-seven cents went for fund raising and administrative costs, the Attorney General's office was able to enjoin further solicitation under the Illinois Act. In commenting on the decision, Attorney General William Clark stated: "The fund raisers are defrauding and misrepresenting to the public the purpose for which these funds will be used."<sup>43</sup>

The preceding decisions manifest the fact that the current Illinois stat-

<sup>36</sup> *People v. Stone*, 24 Misc. 2d 884, 886, 197 N.Y.S.2d 380, 383 (1959).

<sup>37</sup> ILL. ATT'Y GEN. REP. FOR THE BIENNIUM, DIV. OF CHARITABLE TRUSTS AND SOLICITATIONS 4 (1965-66). Clark stated in his report that "I have used as a rule of thumb that whenever a group expends 50% or over of monies solicited for administration and fund raising expenses it is a violation of the Solicitation Act and a fraud upon the public."

<sup>38</sup> News from William G. Clark, Attorney General, State of Illinois, p. 2, Dec. 16, 1963.

<sup>39</sup> *Ibid.*

<sup>40</sup> 63 C 28256 Cir. Ct. of Cook County (1963).

<sup>41</sup> The breakdown of the funds was shown to be: Total income from solicitations, \$1,247,490.00; Direct fund raising costs, 932,216.00; Administrative and other expenses, 182,674.00; Total payments made for treatment, care and schooling of asthmatic children, 170,018.00; Percentage of total income used for administrative and other expenses, 14.64%; Percentage of total income from solicitation used for direct fund raising costs, 74.72%; Percentage of total income used for treatment, care, and schooling of asthmatic children, 13.63%. It is interesting to note that the solicitation letter used by the defendant included a statement which read: "Please remember a portion of your contribution must be used to bring this message to you."

<sup>42</sup> 66 CH 5937 Cir. Ct. of Cook County (1966).

<sup>43</sup> News from William G. Clark, Attorney General, State of Illinois, p. 2, Oct. 5, 1966.

ute is effective in combating the more flagrant violations of the public trust. Authorities generally accept the principle that it should not cost more than twenty-five cents to raise a charity dollar.<sup>44</sup> It is apparent that the conservative swindler in Illinois has a twenty-five per cent margin within which he can pad expenses without challenge by state authorities.

Another criticism of the existing Illinois Solicitation Act is that its effectiveness is primarily founded in the area of enjoining the continuance of illegal operations rather than in preventing an organization from ever soliciting in this state. This is further aggravated by the nominal punishment meted out by the statute in the nature of a misdemeanor with a maximum penalty of \$1,000 and one year imprisonment.<sup>45</sup>

#### CONCLUSION

An ideal state solicitation statute must provide adequate safeguards against fraudulent fund raising activities of voluntary organizations and at the same time cannot be arbitrary, capricious nor discriminatory in its effect, nor can there be unreasonable standards of application. Since present day state legislative regulatory devices are weak and public education can only be a partial aid in reducing fraudulent solicitations, the solution must be found elsewhere.

Certainly there is a need for stronger legislation in Illinois. Initially the success of the Los Angeles Ordinance should be considered. The provisions requiring all solicitors to disclose their administrative and fund raising costs and the amount which actually reaches the objects of the charity may well serve to eliminate some of the present deficiencies. In addition, Illinois should also adopt a policy whereby organizations having a history of exceeding a reasonable administrative and fund raising percentage should be prohibited from soliciting within the state, such percentage being based upon the average costs of charitable solicitations in the state.

A second solution would be an intelligent and examining approach by the contributing public. In every municipality within the state there exists at least one agency, such as the Better Business Bureau, the Attorney General's Office, or a chamber of commerce, where information on most soliciting organizations is available. The time and effort put into a phone call could insure that one's dollar goes for the purpose intended and at the same time could cut off the flow of funds which these dishonest organizations depend on to exist.

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<sup>44</sup> N.Y. Times, Dec. 13, 1964, p. 1, col. 5.

<sup>45</sup> ILL. REV. STAT. ch. 23, § 5111(e) (1963).