

THE NONPROFIT TIMES™

The Leading Business Publication For Nonprofit Management • www.nptimes.com • \$6.00 U.S. June 15, 2008

REGULATION

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'Always Do Right'

Follow Mark Twain's still timely advice in 2008

Attorneys often use hypothetical situations because they're such an effective way of communicating and learning important legal issues and concepts. So, to see whether you picked up on one of the key points made in the regulation columns that ran in these pages during February and March, here's a hypothetical for you to consider.

You recently graduated from law school and found out last month that you passed the Bar exam. Two weeks ago you started your new dream job as General Counsel of a large Pennsylvania-based charity that's solicited contributions nationally for the past 20 or more years. You just finished reading some back issues of *The NonProfit Times* that were in your office when you arrived, including a couple of columns by the former director of the Pennsylvania Bureau of Charitable Organizations who recently retired and is now in private practice. Among other things, the columns addressed the legal requirements for charities that solicit contributions nationally to register in 39 states and the District of Columbia, as well as the potential fines, negative publicity, and other legal sanctions that could result from non-compliance.

Eager to impress your new boss, and somewhat anxious to see whether your new employer is in compliance with these laws, you stop by the executive director's office to discuss these issues. After you inform him about your newfound knowledge, he tells you that he's actually known about these legal requirements for years and that the organization is registered to solicit contributions in Pennsylvania because that's where the organization is located and because Pennsylvania has a reputation for zealously enforcing its solicitation law.

However, he then proceeds to tell you that, after looking into the legal requirements to register with the 38 other states and the District of Columbia several years ago, he concluded that it was simply too cumbersome and costly to do so. Besides, he'd heard that most states have very limited resources to pursue violations of these laws. As a result, many years ago he decided to only register with Pennsylvania because that's where the organization is



located and simply wait to see whether any other state oversight agencies ever contact the organization about its unregistered solicitations in their states.

Your new boss tells you that if any other state were to ever discover that the organization was soliciting there, he would simply plead "ignorance of the law," offer to promptly submit the required registration materials, and ask that any possible fines or penalties be waived. He further tells you that he knows for a fact that many other organizations in exactly the same situation have adopted a similar strategy - wait to comply if, and only if, their noncompliance is eventually discovered by one or more states.

The executive director proudly tells you that he figures he's saved the organization thousands of dollars in registration fees alone as a result of this strategy. Your new boss then turns to you and asks what you think of his cost-saving strategy.

After you carefully and respectfully express your concerns that this might not be the most prudent or appropriate course to take in light of the potential fines, potential negative publicity, and the possibility of other legal sanctions, your new boss tells you that he certainly understands your concerns and, therefore, would like you to recommend which states the organization should "consider" registering with and which states the organization can "take its chances with" and not register with unless contacted by those states.

You really love your new job and obviously want to keep it - not to mention stay on good terms with your new boss. You and your wife just purchased your first home because you're expecting your first child in three months and next month you have to start making payments on the \$110,000 student loan you took out to go to law school and the \$52,000 student loan your wife took out to obtain her undergraduate degree. What should be your response to the request?

Well, per Bruce Hopkins, the nationally-known nonprofit expert in this area, "[t]he problem for the lawyer [in this situation] is that he or she ought not to counsel flouting or breaking the law. Thus, the lawyer should advise the charitable organization client that it must adhere to the law of every state in which it is soliciting contributions and not wait for some informal notice or otherwise wait 'until caught.' The lawyer ought not advise the charitable organization client to comply in the 'rigorous regulatory' states and 'wait to see what happens' in the others."

Given the widespread noncompliance with most state solicitation laws, it's essential that attorneys follow Hopkins' advice and remember they should not be advising their charitable organization clients, or anyone for that matter, to knowingly violate the law.

Furthermore, especially in this age of heightened media and Congressional scrutiny, it's simply unwise for organizations to knowingly violate these laws. Not

only do organizations that do so risk the imposition of significant fines and penalties, they also risk negative media coverage that can often be even more harmful to the organizations' bottom lines than any fines or penalties that might be imposed.

Therefore, if you find that your organization is not properly registered to solicit contributions in every state where it is soliciting that has a registration requirement, you should really take steps to remedy that situation as soon as possible. Even if you're aware of other organizations that are willing to continue taking their chances and flout the law in this area, you should resolve to follow Mark Twain's still timely advice: "Always do right. That will gratify some of the people, and astonish the rest." This will obviously cost your organization additional money, however, that's usually the case with doing what is right.

Nonetheless, it will be worth it because, as was stated in the earlier columns, you'll sleep better and will be able to pick up the paper each morning knowing that, should your organization be featured in an article on the paper's front page, it will be for all the good it's been accomplishing rather than because it was caught violating the law. *NPT*

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