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Legal Issues for Nonprofits

Fundraising on the Internet: To Register or Not to Register

With the Internet and the Web playing an increasingly prominent role in the day-to-day lives of many, more nonprofits are turning to the web as a new tool to promote their programs, reach new clients and attract support. When it comes to fundraising, however, organizations face more than just technological challenges. The question of whether solicitation registration is required in other states is an unsettled and complex one.

Almost all states have laws regarding registration of nonprofits that operate or seek donations within that state. When a nonprofit's website seeks donations (either through on-line or off-line methods), the solicitation is potentially directed at all of the site's viewers, regardless of their location. This could mean, theoretically, that every nonprofit that solicits via its website must register in every state. Given the associated costs in terms of both time and money, this prospect is frightening. Whether nonprofits are indeed required to register, however, is a matter of some debate.

Recognizing the difficulties of registration in every state, the National Association of State Charities Officials (NASCO) has adopted a set of suggested guidelines known as "The Charleston Principles." The Principles, while only suggestions, give some indication of how several state officials are approaching the issue. They seek to balance the need of governments to protect their residents from fraud and abuse with the desire to allow charities to use the Internet as the valuable tool it can be.

Under the Principles, any organization that is actually located in or operates in a state would be required to register there, as would an organization that specifically targets that state's residents. If an organization receives substantial or frequent contributions from a state they would need to register, and registration would also be required if the nonprofit seeks contributions through e-mails or other communications in conjunction with the website. The Principles also call for individual states to work to streamline their registration processes, either through the use of the Unified Registration Statement or other common procedures.

Although the Principles are not law and have not been formally adopted in their entirety by any states, it is hoped that they will help guide the future development and amendment of state laws to allow nonprofits to use their websites for fundraising without worrying about costly and burdensome registration if any contact is purely incidental.

For now, however, organizations must carefully evaluate their contacts with individual states – including the amount of direct outreach they conduct and the actual number and amount of donations they receive from those states. Some states have been more aggressive than others in enforcing their registration laws against out-of-state nonprofits who are conducting web-based fundraising campaigns. Only after careful consideration of their actual activities and effects can an organization decide whether the burden and expense of registration makes sense. In some cases, steps such as the use of language limiting the scope of fundraising efforts or the use of third-party fundraisers who are registered in each state may be a more realistic option.

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

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