

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37243

February 6, 2001

Opinion No. 01-018

Charitable Solicitations

QUESTIONS

1. Whether, under the provisions of the Solicitations of Charitable Funds Act, Habitat for Humanity, International is a bonafide religious institution within the meaning of Tenn. Code Ann. § 48-101-502(c)(1)?

2. Whether the Georgia solicitations statute is similar in substance to the Tennessee solicitations statute so that the Georgia solicitations statute can be used as a basis for making a determination that Habitat for Humanity, International is exempt from registration under the reciprocity provisions of the Solicitations of Charitable Funds Act, codified at Tenn. Code Ann. § 48-101-510, *et seq*?

OPINION

1. No, under the provisions of the Solicitations of Charitable Funds Act, Habitat for Humanity, International is not a bonafide religious institution within the meaning of Tenn. Code Ann. § 48-101-502(c)(1).

2. Yes, the Georgia solicitations statute is similar in substance to the Tennessee solicitations statute so that the Georgia solicitations statute can be used as a basis for making a determination that Habitat for Humanity, International is exempt from registration under the reciprocity provisions of the Solicitations of Charitable Funds Act, codified at Tenn. Code Ann. § 48-101-510, *et seq*.

ANALYSIS

Tennessee's Charitable Solicitations Act was enacted in 1976, as the Solicitations of Charitable Funds Act. The purpose of the Solicitations of Charitable Funds Act is "to regulate solicitation of funds for charitable organizations, to authorize the Secretary of State to regulate professional solicitors and charitable organizations; [to determine] exempt organizations, [establish] registration procedures, [and prohibit] acts and penalties. . ." 1976 Tenn. Public Acts, ch. 735.

Charitable organizations must register with the Secretary of State as set forth in Tenn. Code Ann. § 48-101-504. The statute requires that charitable organizations which intend to solicit contributions from or within the state of Tennessee file a registration statement with the Secretary of State.

Charitable organizations may be exempt from filing a registration statement with the Secretary of State. The Charitable Solicitations Funds Act provides a specific exemption for "bona fide religious institutions" in Tenn. Code Ann. § 48-101-502(c)(1). The definition of "bona fide religious institutions" as set forth in Tenn. Code Ann. § 48-101-502(c)(1) includes:

(1) Ecclesiastical or denominational organizations, churches, or established physical places for worship in this state, at which nonprofit religious services and activities are regularly conducted and carried on and also includes those bona fide religious groups which do not maintain specific places of worship and which are not subject to federal income tax and are not required to file an IRS Form 990 under any circumstance;

Tenn. Code Ann. § 48-101-502(c)(1).

To qualify as a bona fide religious institution, a charitable organization must separately satisfy all three requirements set forth in Tenn. Code Ann. § 48-101-502(c)(1). Under the provisions of the Solicitations of Charitable Funds Act, the term "bona fide religious institutions" includes, but is not limited to, an ecclesiastical or denominational organization, a church, or established physical places for worship in the state of Tennessee, or a religious group which does not maintain a specific place of worship.¹ In addition, the second requirement of the statute is that the charitable organization not be subject to federal income tax.² Further, the charitable organization must not be

¹The statute sets forth examples of the types of organizations which fall within the meaning of "bona fide religious institutions." The list is intended to illustrate types of organizations that may qualify for an exemption. Thus, the list is not an exhaustive list. Op. Tenn. Atty. Gen. 97-003 (January 14, 1997).

²Internal Revenue Code § 501 exempts certain organizations from taxation. Section 501(c)(3) exempts: "[c]orporations and any community chest, fund, or foundation, organized and operated exclusively for religious ... purposes, ... no part of the net earnings of which inures to the benefit of any private shareholder or individual...." To qualify for exemption, a church must show that it is (1) organized, and (2) operated, exclusively for religious or

required to file an IRS Form 990 under any circumstance.³ Tenn. Code Ann. § 48-101-502(c)(1).

The purpose of statutory interpretation is to ascertain and give effect to its legislative intent. *Anderson v. Outland*, 210 Tenn. 526, 360 S.W.2d 44 (Tenn. 1962). In interpreting statutes the legislative intent must be determined from the plain language it contains, read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning. *National Gas Distrib., Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991). Where the words of a statute are clear and plain and fully express the legislative intent, there is no room to resort to additional rules on construction. *Anderson v. Outland*, 210 Tenn. 526, 360 S.W.2d 44 (Tenn. 1962).

In construing the pertinent provisions, Habitat for Humanity, International is not a “bona fide religious institutions” as defined by the Tennessee Solicitations of Charitable Funds Act. Habitat for Humanity, International does not satisfy all three-prongs of the definition of “bona fide religious institutions.” Although a specific physical place of worship is maintained by Habitat for Humanity, International in Georgia, Habitat for Humanity, International is required to file an IRS Form 990.⁴ Therefore, under the provisions of the Solicitations of Charitable Funds Act, Habitat for Humanity, International is not a “bona fide religious institution” within the meaning of Tenn. Code Ann. § 48-101-502(c)(1).

However, the Georgia solicitations statute is similar in substance to the Tennessee solicitations statute so that the Georgia solicitations statute can be used as a basis for making a determination that Habitat for Humanity, International is exempt from registration under the reciprocity provisions of the Solicitations of Charitable Funds Act, codified at Tenn. Code Ann. §§ 48-101-510.

charitable purposes. *Hall v. Commissioner*, 729 F.2d 632, 634 (9th Cir.1984).

³The Internal Revenue Service Form 990 is entitled “Return of Organization Exempt from Income Tax.” The Form 990 returns are merely information returns in furtherance of a congressional program to secure information useful in a determination whether legislation should be enacted to subject to taxation certain tax-exempt corporations competing with taxable corporations. It reflects the organization's annual revenues and expenses. Those returns lack the data necessary for the computation and assessment of deficiencies and are not therefore tax returns. *Commissioner of Internal Revenue v. Lane-Wells Co.*, 321 U.S. 219, 64 S.Ct. 511, 88 L.Ed. 684 (1944).

⁴In 1969, Congress amended 26 U.S.C. § 6033 of the Internal Revenue Code (I.R.C.) to limit the mandatory exemption from filing informational returns to “churches, their integrated auxiliaries, and conventions or associations of churches,” as well as certain other organizations. I.R.C. § 6033(a)(2)(A). Habitat for Humanity, International does not qualify for the exemption from filing informational returns. Thus, under federal law, Habitat for Humanity, International must file a Form 990 with the Internal Revenue Service.

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The reciprocity provision of the Solicitations of Charitable Funds Act provides, in pertinent part, that:

The secretary of state shall also grant an exemption from the requirement for the filing of the annual registration statement to charitable organizations organized under the laws of another state, having their principal place of business outside the state, whose funds are derived principally from sources outside the state, and which have been granted exemption from the filing of registration statements by the state under whose laws they are organized, if such state has a statute similar in substance to the provisions of this part.

Tenn. Code Ann. § 48-101-510(b).

Thus, in order to qualify for an exemption under Tenn. Code Ann. § 48-101-510(b), a charitable organization must satisfy four requirements. First, the charitable organization must be organized under the laws of another state. Second, the principal place of business of the charitable organization must be outside the state of Tennessee. Third, the charitable organization's funds must be derived principally from sources outside the state of Tennessee. Lastly, the charitable organization must be exempt from the filing of registration statements by the state under whose laws they are organized and the state must have a statute similar in substance to the provisions of the Tennessee Solicitations of Charitable Funds Act.

Habitat for Humanity, International satisfies all of the four requirements needed to qualify for an exemption under Tenn. Code Ann. § 48-101-510(b). Habitat for Humanity, International is organized under the laws of Georgia, and the principal place of business of Habitat for Humanity, International is located outside the state of Tennessee in Americus, Georgia. In addition, Habitat for Humanity, International's income is derived principally from sources outside the state of Tennessee. Further, the Georgia solicitations statute is similar in substance to the Tennessee solicitations statute. Therefore, the Georgia solicitations statute can be used as a basis for making a determination that Habitat for Humanity, International is exempt from registration under the reciprocity provisions of the Solicitations of Charitable Funds Act, codified at Tenn. Code Ann. § 48-101-510, *et seq.*

The Georgia solicitations statute is similar in substance to the Tennessee solicitations statute. Under both acts, charitable organizations must provide similar information to the Secretary of State as part of its registration. Tenn. Code Ann. §§ 48-101 504 and 506. Ga. Code Ann. § 43-17-5.

Both acts exclude religious institutions from their registration requirements. As previously discussed, the Tennessee Solicitations of Charitable Funds Act provides a specific exemption for "bona fide religious institutions" in Tenn. Code Ann. § 48-101-502(c)(1). Similarly, the Georgia solicitations statute provides a specific exemption for "religious agencies and organizations and charities, agencies, and

organizations operated, supervised, or controlled by or in connection with a religious organization.” Ga. Code Ann. § 43-17-2.

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In addition, both acts require similar information be made available to the public. The Tennessee Solicitations of Charitable Funds Act requires that charitable organizations furnish identification to all persons who solicit contributions from the public on their behalf. The identification should include the name of the holder of the identification and the name and the registration number of the charitable organization. Tenn. Code Ann. § 48-101-512. Further, the Tennessee Solicitations of Charitable Funds Act requires that registration statements, applications, reports, and all other documents and information shall be public records in the office of the secretary of state and shall be open to the general public for inspection. Tenn. Code Ann. § 48-101-511.

Similarly, the Georgia solicitations act requires charitable organizations to disclose the following: (1) the name and location of the paid solicitor and solicitor agent; (2) the name and location of the charitable organization; (3) a description of the charitable program for which the solicitation campaign is being carried out and, if different, description of the programs and activities of the charitable organization on whose behalf the solicitation is being carried out; and (4) a financial statement or summary. Ga. Code Ann. § 43-17-8.

In conclusion, it is the opinion of this Office that under the provisions of the Solicitations of Charitable Funds Act, Habitat for Humanity, International is not a bonafide religious institution within the meaning of Tenn. Code Ann. § 48-101-502(c)(1). However, the Georgia solicitations statute is similar in substance to the Tennessee solicitations statute so that the Georgia solicitations statute can be used as a basis for making a determination that Habitat for Humanity, International is exempt from registration under the reciprocity provisions of the Solicitations of Charitable Funds Act, codified at Tenn. Code Ann. § 48-101-510, *et seq.*

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