STATE OF TENNESSEE
# OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 16-41

"Charitable Purposes" under the Tennessee Charitable Solicitations Act, Tenn. Code Ann. §§ 48-101-501 et seq.

## Question 1

What activities are included in the definitions of "charitable purposes" and "noncharitable purposes" as used in the Tennessee Charitable Solicitations Act, Tenn. Code Ann. § 48-101-513(a)?

## Opinion 1

"Charitable purposes" and "noncharitable purposes" are not defined in the Charitable Solicitations Act. However, given the context in which those terms are used, "charitable purposes" would include activities in substantial furtherance of the benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious, and eleemosynary work of a charitable organization.

## Question 2

Do lobbying activities involving federal, state, or local government constitute a "charitable purpose," and if so, are there limits on the amount of lobbying?

## Opinion 2

Whether lobbying at any governmental level or in any particular "amount" constitutes a "charitable purpose" or a "noncharitable purpose" within the meaning of the Charitable Solicitations Act will depend on the particular facts and circumstances involved in any given instance.

## Question 3

Is an "action organization" as defined in 26 CFR § 1.501(c)(3)-1(c)(3) a "charitable organization" under the Tennessee Charitable Solicitations Act?

## Opinion 3

An "action organization" may or may not be a charitable organization under the Tennessee Charitable Solicitations Act, depending on the particular facts and circumstances in any given instance.

**Question 4**

Do the activities that define an "action organization" in 26 CFR § 1.501(c)(3)-1(c)(3) constitute a "charitable purpose" under the Tennessee Charitable Solicitations Act?

**Opinion 4**

Attempting to influence legislation and advocating or campaigning for objectives that may only be attained via the legislative process may or may not constitute a charitable purpose depending on the particular facts and circumstances involved in any given instance. Participating or intervening in any political campaign in support of or in opposition to any candidate for public office does not constitute a charitable purpose.

**Question 5**

If a "charitable organization" as defined in the Tennessee Charitable Solicitations Act can engage in lobbying and/or political activities, what limits or restrictions, if any, apply to the scope of those activities?

**Opinion 5**

The Tennessee Charitable Solicitations Act does not address or deal with lobbying and does not expressly permit or prohibit lobbying and/or political activities. However, a charitable organization that is required to register under the Charitable Solicitations Act may solicit funds from the public only for charitable purposes and may not spend funds that it solicits from the public for noncharitable purposes. Thus, lobbying and political activities are indirectly limited to those activities that are for a "charitable purpose," which will depend on the particular facts and circumstances involved in any given instance.

## ANALYSIS

### 1. "Charitable Purposes" and "Noncharitable Purposes"

The Tennessee Charitable Solicitations Act, Tenn. Code Ann. §§ 48-101-501 *et seq.*, ("the Act") is intended "to regulate solicitation of funds for charitable organizations, [and] to authorize the Secretary of State to regulate professional solicitors and charitable organizations." 1976 Tenn. Pub. Acts, ch. 735. As part of its regulatory scheme, the Act prohibits a charitable organization from soliciting funds from the public "except for charitable purposes" and prohibits the expenditure of such funds "for noncharitable purposes." Tenn. Code Ann. § 48-101-513(a).

Neither "charitable purposes" nor "noncharitable purposes" is defined in the Act or in the Regulations promulgated by the Secretary of State pursuant to the Act. The meaning of those terms is, therefore, a matter of statutory construction.

When interpreting statutory terms, the primary objective is to carry out the legislative intent without expanding or restricting the statute beyond its intended scope. *State v. Pope*, 427 S.W.3d 363, 367-68 (Tenn. 2013). Legislative intent should be gleaned from the "natural and ordinary

meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language." *Carter v. State*, 952 S.W.2d 417, 419 (Tenn. 1997), *accord Lavin v. Jordan*, 16 S.W.3d 362, 365 (Tenn. 2000). When a statute is clear, the court will apply the plain meaning of the written language and interpret terms based on their natural and ordinary use. *State v. McNack*, 356 S.W.3d 906, 909 (Tenn. 2011); *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). A word used in a statute and not otherwise defined should be given its plain and ordinary meaning. *Shockley v. Mental Health Cooperative, Inc.*, 429 S.W.3d 582, 591 (Tenn. 2013). The court may consider all known definitions of the word, including dictionary definitions, to determine the plain and ordinary meaning of the word. *Najo Equip. Leasing, LLC v. Comm'r of Revenue*, 477 S.W.3d 763, 773 (Tenn. Ct. App. 2015). Indeed, a dictionary is "the usual and accepted source" for finding the "natural and ordinary meaning" of words used in a statute. *English Mountain Spring Water v. Chumley*, 196 S.W.3d 144, 148 (Tenn. Ct. App. 2005). And the General Assembly is presumed to know these familiar rules of statutory construction. *See Dixon v. Holland*, 70 S.W.3d 33, 37 (Tenn. 2002). When a statute is silent on a particular issue, the court may consider the "objective and spirit behind the legislation." *McNack*, 356 S.W.3d at 909.

Although the Act does not define the terms "charitable purposes" and "noncharitable purposes," the Legislature has defined "charitable purposes" in other contexts. For example, Tenn. Code Ann. § 35-10-202 defines "charitable purpose" as "the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community." This definition is consistent with the use of the word "charitable" in the Act itself. The Act defines "charitable organization" to mean a group that is "a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary organization, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety." Tenn. Code Ann. § 48-101-501(a). It follows that "charitable purposes" are purposes substantially and materially related to and in furtherance of benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious, and eleemosynary activities. And this construction comports with the ordinary meaning of "charitable," which is something "of or relating to the assistance of those in need." *New Oxford American Dictionary* 292 (3rd ed. 2010).

"Charitable purposes" and "noncharitable purposes" are opposite and mutually exclusive terms. The prefix "non" is ordinarily used to mean "not involved with." *New Oxford American Dictionary* 1191 (3rd ed. 2010). Therefore, "noncharitable purposes" are those purposes that are not "charitable."

### 2. Lobbying as a Charitable Purpose

Lobbying is ordinarily defined as "[seeking] to influence (a politician or public official) on an issue." *New Oxford American Dictionary* 1024 (3rd ed. 2010).[1] Lobbying activities engaged in by a tax-exempt organization, such as a 501(c)(3) charitable organization, may affect the federal tax-exempt status of the organization. *See* 26 U.S.C. § 501.

[1] For purposes of professional lobbyist registration and regulation in Tennessee, lobbying is "communicat[ing] directly or indirectly, with any official in the legislative branch or executive branch for the purpose of influencing any legislative action or administrative action." Tenn. Code Ann. § 3-6-301.

The Act does not address or deal with lobbying or how lobbying may or may not affect the tax-exempt status of a charitable organization. Doing so is outside the scope of the Act, which is intended only to regulate solicitation of funds for charitable organizations and to regulate professional solicitors for such organizations. 1976 Tenn. Pub. Acts, ch. 735. To effectuate that objective, all charitable organizations defined in Tenn. Code Ann. § 48-101-501 are subject to certain substantive limitations on their activities. Those limitations are outlined in Tenn. Code Ann. § 48-101-507 and § 48-101-513. Section 48-101-507 limits whom a charitable organization may use as a professional solicitor. Section 48-101-513 limits the purposes for which a charitable organization may solicit funds, the manner in which those solicitations may occur, and the purposes for which those funds may be expended. The rest of the Act establishes registration requirements (from which certain organizations are exempt), other administrative and filing requirements, and enforcement mechanisms.

Even though the Act does not address lobbying explicitly, it may in some cases implicitly affect lobbying. A charitable organization that is required to register under the Act may solicit funds from the public only for charitable purposes and may not spend funds that it solicits from the public for noncharitable purposes. Tenn. Code Ann. § 48-101-513(a). Thus, to the extent that a charitable organization engages in lobbying, it may not solicit funds for its lobbying activities or spend solicited funds on lobbying activities unless those lobbying efforts are for a charitable purpose.

Whether lobbying at any governmental level or in any particular "amount" constitutes a "charitable purpose" or a "noncharitable purpose" within the meaning of the Act will depend on the particular facts and circumstances involved in any given instance. For example, if a charitable organization advocates for or educates legislators on an issue related to its charitable mission, it may be engaged in a "charitable purpose." But if it advocates for issues that are beyond the scope of its charitable mission or engages in purely political activity, it may be engaged in a noncharitable purpose.

### 3. "Action Organization" as a "Charitable Organization"

An organization is an "action organization" under 26 CFR § 1.501(c)(3)-1(c)(3) if a substantial part of its activities is attempting to influence legislation; if it participates or intervenes in any political campaign in support of or in opposition to any candidate for public office; or if its main or primary objective(s) may be attained only by legislation or defeating legislation and it advocates, or campaigns for, the attainment of such main or primary objective(s) as distinguished from engaging in nonpartisan analysis, study, or research, and making the results thereof available to the public.

A "charitable organization" under the Act is

> a group which is or holds itself out to be a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary organization, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety, or any person who solicits or obtains contributions solicited from the public for charitable purposes. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state shall be a charitable organization for the purposes of this part.

Tenn. Code Ann. § 48-101-501(a).

An action organization may or may not be a charitable organization, depending on the particular facts and circumstances in any given instance. None of the characteristics of an action organization listed in 26 CFR § 1.501(c)(3)-1(c)(3) is antithetical to the definition of "charitable organization" under the Act. Therefore, nothing prevents an action organization from being a charitable organization under the Act if it otherwise meets the definition of charitable organization under the Act.

### 4. "Action Organization" Activities as "Charitable Purposes"

An action organization as defined in 26 CFR § 1.501(c)(3)-1(c)(3) is an organization that engages in one or more of three types of activities: (1) attempting to influence legislation; (2) participating or intervening in any political campaign in support of or in opposition to any candidate for public office; and (3) advocating or campaigning for objectives that may only be attained by legislation or defeating legislation.

Attempting to influence legislation and advocating for objectives that may only be attained via the legislative process are both forms of lobbying. Like other lobbying activities, they may or may not constitute a charitable purpose within the meaning of the Act depending on the particular facts and circumstances involved.

Participating or intervening in a political campaign in support of or in opposition to any candidate for public office is generally considered political activity distinct from lobbying. Lobbying seeks to influence a politician or a public official. In contrast, efforts to support or oppose a candidate for public office seek to influence the voting public. The solicitation and

expenditure of funds in support of or in opposition to a candidate for public office are not within the scope of and are not regulated by the Act. Rather, solicitation of funds for political activity is separately regulated by Tennessee's Campaign Finance Disclosure Act, Tenn. Code Ann. §§ 2-10-101 *et seq.* This statutory separation indicates a legislative intent that solicitation for political activity is different from solicitation for charitable purposes.

**5. Limits on Lobbying**

See Section 2, above.

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