

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE SECRETARY OF THE COMMONWEALTH

Commonwealth of Pennsylvania,
Bureau of Charitable Organizations

v.

Citizens Committee for the
Right to Keep & Bear Arms

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Docket No. 0006-98-01

File No. 01-98-00451

Department of State

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PROTHONOTARY

ADJUDICATION AND ORDER

Kim Pizzigrilli
Secretary of the Commonwealth

302 North Office Building
Harrisburg, PA 17120
(717) 787-7630

HISTORY

This matter comes before the Secretary of the Commonwealth (Secretary) on an order to show cause (OSC) filed May 24, 2001, by the Bureau of Charitable Organizations of the Department of State (Bureau) alleging that Citizens Committee for the Right to Keep and Bear Arms (Respondent) is subject to administrative sanctions for violations of the Solicitation of Funds for Charitable Purposes Act (Solicitations Act), Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. §§162.1-162.24.

Respondent filed an answer to the OSC on June 12, 2001, through its chairman, Alan M. Gottlieb. In its answer Respondent denied (1) that it was a charitable organization subject to the Solicitation Act and averred that it was a political organization, (2) denied that it had received the order and various notices issued by the Bureau, (3) demanded strict proof of its solicitations in the Commonwealth, and (4) asserted that its activities within the Commonwealth were constitutionally protected political speech under the First Amendment of the United States Constitution.

On June 27, 2001, a notice of hearing was issued scheduling a hearing for July 20, 2001 before a hearing examiner designated by the Secretary of the Commonwealth to conduct hearings brought under the Solicitation Act. On July 2, 2001, Respondent sent a letter to the hearing examiner stating that the Respondent did not intend to appear at the hearing because it did not have offices or personnel in the Commonwealth. The hearing was held on July 20, 2001 before Joyce McKeever. The Commonwealth was present and represented by Carole L. Clarke, counsel of record, and Philip Zarone, prosecuting attorney.

FINDINGS OF FACT

1. Respondent is not and has never been registered as a charitable organization in the Commonwealth of Pennsylvania. (OSC, Answer ¶ 1)
2. Respondent's last known office address is 12500 NE 10th Place, Bellevue, WA 98005. (Answer ¶ 2)
3. From July through October, 1998, an elderly Pennsylvania resident received via the United States Postal Service (USPS) three mailings (solicitations) to her residence from Respondent which requested that she contribute to the Respondent's organization. The Bureau received the solicitations from the resident on October 28, 1998. (N.T. 8, Exhibits C-1-3)
4. The Bureau notified Respondent of its registration obligations through letters to Respondent's mailing address dated December 8, 1998, February 23, 1999, and March 29, 1999; Respondent received the letter of March 29, 1999, as evidenced by receipt of the returned Postal Form 3811 (Form 3811). (N.T. 20, Exhibit C-24)
5. On April 5, 1999 the Bureau received a letter from Respondent's chairman (Mr. Gottlieb) stating that Respondent believed that it did not have to register with the Bureau because it was a political organization. (N.T. 21, Exhibit C-25)
6. On April 16, 1999, the Bureau sent Respondent a letter via certified mail informing Respondent that, notwithstanding its response, the Solicitations Act required that Respondent register with the Department; on April 22, 1999 Respondent received the April 16, 1999 letter, as evidenced by the returned Form 3811. (Exhibit C-26)

7. On June 11, 1999, the Bureau sent to Respondent a Cease and Desist Order (CDO) issued by the Secretary directing Respondent to cease and desist from solicitation of charitable contributions in Pennsylvania until it registers with the Bureau; on June 16, 1999, Respondent received the CDO as evidenced by the returned Form 3811. (N.T. 26, Exhibit C-29)
8. During 1999, the same Pennsylvania resident received 13 additional solicitations from Respondent via USPS asking for contributions to Respondent's organization. (N.T. 13-14, Exhibits C-4-16)
9. In 2000, the same Pennsylvania resident received 8 additional solicitations from Respondent via USPS asking for contributions to Respondent's organization. (N.T. 13-14, Exhibits C-17-23)
10. On November 21, 2000, the Bureau by Karl E. Emerson, Director, issued to Respondent an Investigative Subpoena ordering that by December 11, 2000, Respondent provide a listing of Pennsylvania residents solicited and contributions received from them. The subpoena was sent to Alan M. Gottlieb via regular first class mail, certified mail and Federal Express. On November 22, and 27, 2000, Respondent received the subpoena as indicated by Federal Express and USPS tracking records. (N.T. 26, Exhibit C-29)
11. The Respondent did not comply with the subpoena on the date specified, or at any time prior to the date of the hearing. (N.T. 27)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (Findings of Fact No. 1)
2. Respondent has received notice of the charges against it and has been given an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 35.37 (Findings of Fact Nos. 4, 7, 9, 12, 15, 20)
3. Respondent violated Section 15(a)(1) of the Solicitations Act, 10 P.S. §162.15(a)(1), by soliciting contributions prior to the solicitation and contract having been approved by the Department. (Findings of Fact 1-9, Counts 1-20, 25-28)
4. Respondent violated Section 17(a)(1) of the Solicitations Act, 10 P.S. §162.17(a)(1) by failing to comply with a lawful cease and desist order issued by the Secretary to register with the Bureau before making additional solicitations for contributions in the Commonwealth. (Findings of Fact Nos. 7-9, Counts 21-24, 29-32)
5. Respondent violated Section 17(a)(2) of the Solicitations Act, 10 P.S. §162.17(a)(2), by failing to comply with a lawful subpoena issued by the Bureau for the production of information and records. (Findings of Fact Nos. 10-11, Count 33)

DISCUSSION

The OSC filed in this matter is brought under Section 4 of the Solicitation Act, 10 P.S. §162.4, which grants the Secretary authority over charitable organizations as follows:

Powers and duties of secretary

The secretary shall have the following powers and duties to:

- (1) Provide for and regulate the registration of charitable organizations, professional fundraising counselors and professional solicitors.
- (2) Decide matters relating to the issuance, renewal, suspension or revocation of registrations.
- (3) Promulgate, adopt and enforce the rules and regulations necessary to carry out this act.
- (4) Promulgate regulations altering fees and fines established in this act sufficient to meet expenditures of the bureau.
- (5) Take appropriate action to initiate any civil or criminal proceedings necessary to enforce this act, in accordance with the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act.
- (6) Conduct hearings and make adjudications.
- (7) Keep a record showing the names and addresses of all registered charitable organizations, professional fundraising counsel and professional solicitors.
- (8) Submit annually, on or before September 30, to the Governor, to the State Government Committees of the House of Representatives and Senate, as well as to interested parties, a report on the number of registered charities, the number of charities ordered to cease and desist solicitation, the number of charities contracting with professional solicitors and the compensation of professional solicitors for each

solicitation campaign in relation to the funds raised and administrative costs.

(9) Delegate to a division director of his office such powers and duties under this act as he may deem appropriate.

(10) Exercise all other authority accorded to him by this act.

Respondent was alleged to have committed a total of 33 counts of violations of the Solicitations Act. Counts 1-20 and 25-28 concern solicitations to a Pennsylvania resident to contribute money further to Respondent's activities. Counts 21-24 and 29-33 concern failure to comply with the CDO and the Bureau's subpoena. The Respondent's answer raises legal challenges to the authority of the Secretary to decide the matter. Because the Respondent's legal challenges are jurisdictional in nature they will be addressed in this adjudication to the extent authorized under the Secretary's authorizing statute, the Solicitations Act, and the evidence of record.¹

Preliminarily, Respondent contends that it did not receive notice of the Bureau's determinations because the notices were sent to the wrong address. The Administrative Agency Law, 2 Pa. C.S. § 504, requires that no adjudication shall be valid unless the Respondent has received notice of the charges against him and an opportunity to be heard. The record is undisputed that Respondent received notice of the charges since Respondent filed an answer to the OSC. Secondly, the Bureau's evidence of USPS return receipt Form 3811 establish that Respondent received the initial notices to it (prior to the issuance of the OSC) regarding the registration requirements of the Solicitations Act.

¹ An administrative agency, or authority such as the Secretary, which has been granted investigatory powers, has initial jurisdiction to determine the applicability of the authorizing statute. *Pennsylvania Human Relations Commission v. Landsdowne Swim Club*, 515 Pa. 1, 526 A. 2d 578 (1987). With regard to Respondent's challenge to the jurisdiction of the Secretary on the grounds that its activities are constitutionally protected free speech, the Secretary does not have authority to decide constitutional issues. *Parsowith v. Department of Revenue*, 702 A.2d 1107 (Pa. Cmwlth. 1997).

Respondent next contends that it is not subject to the jurisdiction of the Secretary because its activities in the Commonwealth do not fall within the purview of the Solicitations Act.

Section 3 of the Solicitation Act defines “Charitable organization” as follows:

“Charitable organization.” Any person granted tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) or any person who is or holds himself out to be established for any charitable purpose or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any solicitation. An affiliate of a charitable organization which has its principal place of business outside this Commonwealth shall be a charitable organization for the purposes of this act.

10 P.S. § 162.3.

Section 15 (a)(1) of the Solicitation Act states:

Prohibited acts

(a) **General Rule.**—Regardless of a person’s intent or the lack of injury, the following acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act, regulations of the department or an order of the secretary, or soliciting contributions after registration with the department has expired or has been suspended or revoked or soliciting contributions prior to the solicitation notice and contract having been approved by the department.

10 P.S. §162.15(a)(1).

Edward Shevenock, Chief of the Special Investigations Unit (SIU) of the Bureau, testified that the Respondent’s mail solicitations were received by the Bureau from a Pennsylvania senior citizen who lodged an inquiry with the Bureau regarding Respondent. He testified that the senior citizen was not present to testify because she was

in ill health and that she wanted to remain anonymous for fear of retaliation from the organization.² The solicitations obtained from the senior citizen sent by the Respondent have the tendency to suggest that they had a charitable purpose. For example, a solicitation from Respondent contained the following statement, “And along with your finished questionnaire, please rush a much needed generous contribution of \$20, \$50, \$75 or even \$100 to help us expose anti-gun lies and rhetoric that undermine our rights.” (Exhibit C-3). The letter continues, explaining that the contributions will be used for funding of grassroots lobbying, public education and training activists. Moreover, in Respondent’s IRS Form 990 Return (for tax exempt organizations under section 501 (c) (3) of the Internal Revenue Code), Respondent listed “education of the public regarding present and proposed gun control legislation.” (Exhibit C-30) The evidence of record therefore demonstrates that Respondent is within the Solicitation Act’s definition of “charitable organization” and therefore is subject to the Secretary’s oversight under the Solicitation Act.

Steven L. Uhlrich, special investigator for the SIU of the Bureau, testified that the June 16, 1999 CDO of the Secretary was mailed to Respondent and received by it as evidenced by the USPS Form 3811. (N.T. 25, Exhibit C-28) Thereafter, in 1999 and 2000, Respondent sent multiple additional solicitations to the Pennsylvania resident.³

² Had the testimony been objected to, the Secretary may have been called upon to determine whether Mr. Shevenock’s testimony could take the place of the Pennsylvania resident who received the solicitations. In the absence of an objection, the Secretary may give the evidence its logical probative weight. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976).

³ Mr. Shevenock testified that on October 21, 1999, he obtained 8 separate solicitations which the Pennsylvania resident received after his prior visit of May 21, 1999. The solicitations and the mailing envelope do not indicate when the solicitations were posted. On February 10, 2000, and October 24, 2000, Mr. Shevenock testified that he received an additional 11 solicitations from the Pennsylvania resident which were received after his visit of October 21, 1999. (N. T. 14-15)

Therefore, the Commonwealth has shown by sufficient evidence that Respondent violated a lawful order of the Secretary.

Mr. Uhrich also testified that Respondent was served with the investigative subpoena which was prepared and issued by Karl E. Emerson, Director of the Bureau. (N.T. 26) The subpoena required the submission of information and documents by December 11, 2000. (Exhibit C-29) As of the date of the hearing, Respondent had not answered or complied with the subpoena. (N.T. 27) Therefore, the evidence establishes that Respondent violated Section 17(a)(2) of the Solicitations Act, 10 P.S. 162.17(a)(2) by failing to comply with the subpoena to produce records and provide information regarding Respondent's solicitations in the Commonwealth.

Under Section 17 of the Solicitation Act, the Secretary is authorized to impose penalties for the above violations of the Act. Section 17 states as pertinent:

Administrative enforcement and penalties

(a) *General rule.*—The secretary may refuse to register or revoke or suspend the registration of any charitable organization, professional fundraising counsel or professional solicitor whenever he finds that a charitable organization, professional fundraising counsel or professional solicitor, or an agent, servant or employee thereof:

(1) Has violated or is operating in violation of any of the provisions of this act, the regulations of the department, or an order issued by the secretary.

(2) Has refused or failed or any of its principal officers has refused or failed, after notice, to produce any records of such organization or to disclose any information required to be disclosed under this act or the regulations of the department.

* * *

(b) *Additional actions.*—When the secretary finds that the registration of any person may be refused, suspended or revoked under the terms of subsection (a), the secretary may:

* * *

(3) Impose an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of this act and an additional penalty, not to exceed \$100 for each day during which such violation continues. Registration will be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid.

10 P.S. §162.17(a).

Between the dates of October 1998 and October 2000, the Bureau received 24 separate solicitations that had been sent to a Pennsylvania resident. Respondent was not registered as a charitable organization at any time during this period. The Bureau repeatedly attempted to contact Respondent, and, as proved by the Commonwealth, succeeded in March 1999. At that time, the Bureau put Respondent on notice of its obligation to register as a charitable organization. On June 11, 1999, the Secretary issued a CDO for failure to register. Respondent continued to send charitable solicitations and did not attempt to register with the Bureau as a charitable organization. The Commonwealth proved eight separate violations of the CDO. Finally, the Commonwealth proved that Respondent failed to comply with a lawful investigative subpoena issued pursuant to Section 16 of the Solicitations Act, 10 P.S. §162.16.

Based upon the above facts and conclusions of law, Respondent violated Section 15 (a) the Solicitation Act, 10 P.S. § 162.15(a), multiple times by soliciting charitable contributions in Pennsylvania without first registering with the Bureau, by soliciting charitable contributions in Pennsylvania after a CDO had been issued against it, and by refusing to comply with a lawful subpoena of the Bureau. Therefore, Respondent is

subject to the imposition of administrative fines and other penalties in accordance with Section 17 of the Solicitations Act, 10 P.S. § 162.17. In the absence of any mitigation, the Secretary determines that the maximum administrative fine, \$33,000, or \$1,000 per count as alleged in the OSC, should be imposed. Accordingly, the following order shall issue.

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ORDER

AND NOW, this *10th* day of *December*, 2001, in accordance with the foregoing findings of fact, conclusions of law and discussion, the Secretary of the Commonwealth hereby **ORDERS** that an administrative fine in the amount of \$33,000, \$1,000 per violation of the Solicitations Act, be and hereby is, imposed upon Respondent **Citizens Committee for the Right to Keep & Bear Arms**. It is further ordered that no registration shall be accepted on behalf of Respondent **Citizens Committee for the Right to Keep & Bear Arms** until the fine is paid in full.

BY ORDER



Kim Pizzigrilli
Secretary of the Commonwealth

Date of Mailing: *12-14-01*

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Respondent:
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