

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

Commonwealth of Pennsylvania,
Bureau of Corporations and
Charitable Organizations

v.

The Mechanicsburg Club,
Respondent

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:
:
:
:
:

Docket No. 0013 -98-14

File No. 14-98-06090

Department of State

2014 OCT 24 PM 1:43

PROTHONOTARY

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Corporations and Charitable Organizations (“Bureau”) and **The Mechanicsburg Club** (“Respondent”) stipulate as follows in settlement of the above-captioned matter:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth (“Secretary”) pursuant to the Solicitation of Funds for Charitable Purposes Act (“the Act”), Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. §§ 162.1-162.24.

LICENSE AND REGISTRATION STATUS

2. Respondent does not deny the truth of the following averments regarding its professional licensure:

a. At all relevant and material times, Respondent conducted business in Pennsylvania as a charitable organization, as defined by the Act.

b. At all relevant and material times, Respondent did not hold a registration to solicit charitable contributions within the Commonwealth of Pennsylvania.

c. At all relevant and material times, Respondent was not exempt or excluded from the requirements of the Act.

d. The last known mailing address for the Respondent is 333 Heinz Street, Mechanicsburg, PA 17055.

FACTUAL ALLEGATIONS

3. The Respondent admits that the following allegations are true:

a. On or about August 2, 2011, the Bureau of Corporations and Charitable Organizations (Bureau) notified Respondent that it may be required to register pursuant to the Act and that it had thirty (30) days to respond by becoming properly registered or providing evidence that it is exempt or excluded from registering under the Act.

b. Respondent failed to respond within the thirty (30) day deadline.

c. As a result, on or about September 7, 2011, the Secretary issued a Cease and Desist Order against Respondent.

d. On or about September 12, 2011, Respondent appealed the September 7, 2011 Cease & Desist Order and requested a hearing to prove that it did not solicit funds for charitable purposes.

e. A hearing was held on November 7, 2011 and a final Adjudication & Order was issued on February 27, 2012, finding that Respondent is a charitable organization and that it has solicited contributions in the Commonwealth without proper registration.

f. A true and correct copy of the February 27, 2012 Adjudication & Order is attached and incorporated as **Exhibit A**.

g. The February 27, 2012 Adjudication & Order ordered that Respondent cease and desist from soliciting contributions in the Commonwealth until such time as it is duly registered with the Bureau.

h. As of May 27, 2014, Respondent has continuously solicited contributions through the hosting of the small game of chance, bingo.

i. During the period from August 31, 2009 to August 31, 2010, Respondent grossed over three million dollars (3,000,000.00) in gaming activities not only for the purpose of providing its members with social and recreational activities, but also to provide local community organizations and events with financial support.

AGREED VIOLATIONS

4. The parties agree that by engaging in the foregoing activities, Respondent committed the following violations of the Act at:

a. Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by soliciting contributions in violation of Orders issued by the Secretary of the Commonwealth; and,

b. Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), by soliciting contributions in the absence of an approved registration.

TERMS OF BOARD ORDER

5. To address concerns raised by the Commonwealth and to resolve this matter on a compromise basis, the Commonwealth and the Respondent, intending to be legally bound, agree to the issuance by the Secretary of the following Order in settlement of this matter:

a. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that the organization continued to solicit contributions in violation of Orders issued by the Secretary of the Commonwealth.

b. Respondent violated Section 15(a)(1) of the Act, 10 P.S. § 162.15(a)(1), in that the organization solicited contributions in the absence of an approved registration.

ADMINISTRATIVE FINE

c. An **ADMINISTRATIVE FINE** in the amount of **FOUR-THOUSAND-DOLLARS (\$4,000.00)** is hereby levied upon Respondent.

(1) Respondent shall tender the full sum of the ADMINISTRATIVE FINE with the return of this executed Consent Agreement;

(2) Payment of the ADMINISTRATIVE FINE shall be by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.).

(3) The instrument of payment shall be payable to the 'Commonwealth of Pennsylvania,' and shall be valid for a period of at least one hundred eighty (180) days.

(4) Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check.

FILING OF REGISTRATION DOCUMENTS

d. Respondent agrees not to solicit charitable contributions in the Commonwealth of Pennsylvania without first being properly registered with the Bureau in accordance with Section 162.5 of the Act, 10 P.S. § 162.5.

e. Respondent acknowledges that failure to register with the Bureau when required to do so, may result in an administrative fine of \$1,000.00, and an additional penalty of \$100.00 for each day the violations continue.

f. Respondent acknowledges that failing to register with the Bureau when required to do so may result in a subsequent registrations being automatically suspended until the fine is paid or until the normal expiration date of the registration in accordance with Section 162.17 of the Act, 10 P.S. § 162.17.

g. Respondent acknowledges that no subsequent registration shall be renewed until the fine is paid.

h. Respondent shall not enter into any contract or agreement or employ any professional fundraising counsel or professional solicitor unless that professional fundraising counsel or professional solicitor is registered with the Bureau.

CASE SETTLED AND DISCONTINUED

i. This case shall be deemed settled and discontinued upon the Secretary issuing an Order approving and adopting this Consent Agreement and upon the Respondent's successful completion of the requirements of this Order.

j. Nothing in this Consent Agreement and Order shall preclude the Prosecuting Attorney for the Bureau from filing charges, or the Secretary from imposing, disciplinary or corrective measures for violations or facts not contained in this Consent Agreement and Order.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

6. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

7. Respondent waives the filing of an Order to Show Cause in this matter.

8. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

9. Respondent acknowledges that it is aware that it has the right to consult with, and be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement.

10. To the extent that Respondent is not represented by legal counsel, Respondent has knowingly elected to proceed in this matter without the assistance of legal counsel.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

11. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Secretary or her counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

12. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

AGREEMENT NOT BINDING ON OTHER PARTIES

13. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other governmental or administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State.

14. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Secretary issues an Order approving and adopting this Consent Agreement.

EFFECT OF SECRETARY'S REJECTION OF CONSENT AGREEMENT

15. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES

16. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent Agreement shall preclude representatives of the Bureau from referring any information or data produced as a result of this matter to any federal, state, or local

agency or governmental unit having jurisdiction over the activities of Respondent or any officer, director, agent, employee or independent contractor of the Respondent.

ENTIRE AGREEMENT

17. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

VERIFICATION OF FACTS AND STATEMENTS

18. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

T'rese M. Evancho
T'rese M. Evancho
Prosecuting Attorney
Department of State

DATED: 10/6/2014

[Signature] @TTY
The Mechanicsburg Club
Respondent

DATED: 9-23-14

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

PROHIBITORY

2012 FEB 07 11:10:27

Date

In the Matter of the Appeal :
of The Mechanicsburg Club, Petitioner, : Docket no. 0036-98-11
from the Secretary's Cease and Desist Order : File no. 11-98-09358
dated September 7, 2011 :

FINAL ADJUDICATION AND ORDER

Carol Aichele
Secretary of the Commonwealth

401 North Street, Room 302
Harrisburg, PA 17120

EXHIBIT
A

HISTORY

This case comes before the Secretary of the Commonwealth (Secretary) on the appeal by The Mechanicsburg Club (Petitioner) of the Order of the Secretary, dated September 7, 2011, finding that Petitioner is not registered with the Department of State (Department), Bureau of Charitable Organizations (Bureau) and has solicited contributions in Pennsylvania while it was not registered, in violation of the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202 (Act), *as amended*, 10 P.S. §§ 162.1 *et seq.* The Secretary's Order further directed Petitioner to cease and desist from soliciting contributions in Pennsylvania until such time as Petitioner has duly registered with the Bureau or provided information that it is excluded or exempt from registration.

By letter dated September 12, 2011, Petitioner requested a hearing and asserted that it does not solicit funds for charitable purposes. Thereafter, a Notice of Hearing scheduled the matter for hearing to occur on November 7, 2011, and the formal administrative hearing occurred as scheduled. Jacquelyn E. Pfursich, Esquire represented the Commonwealth. Petitioner was represented by P. Richard Wagner, Esquire. At the hearing, the Commonwealth presented testimonial and documentary evidence in support of the allegations in the Order to Show Cause (OSC). Petitioner presented witnesses in defense. The parties indicated the intent to file post-hearing briefs, the hearing transcript was filed on November 17, 2011, and an Order Establishing Briefing Schedule was filed November 21, 2011. The Commonwealth filed its initial post-hearing brief on December 21, 2011, Petitioner filed its responsive brief on January 9, 2012, the Commonwealth filed a reply brief on January 12, 2012, and the record is now closed.

FINDINGS OF FACT

1. A charitable organization, unless exempt, is required to file a registration statement with the Department. Act at § 5(a), 10 P.S. § 162.5(a).
2. Petitioner is a Pennsylvania corporation formed in 1894 which is a 501(c)(7) tax-exempt organization under IRS regulations. Exhibit C-2, boxes I, K, L and M; Exhibit C-3, boxes I, K, L and M; Notes of Testimony (NT) at 35, 46, 47, 61.
3. Petitioner is not registered as a charitable organization with the Bureau. Exhibits C-5 and C-6; NT at 26, 27 – 28, 63.
4. Petitioner's stated mission is to aid and build the Mechanicsburg community by "providing local community organizations and events with financial support." Exhibit C-2, C-3 and C-4; NT at 16, 17, 19 – 20, 69, 71.
5. Petitioner raises money to aid and build the community by hosting small games of chance such as raffles, bingo and pull tabs. Exhibits C-2, C-3 and C-4; NT at 22, 23, 24, 50 – 51, 55, 61, 69, 70.
6. Petitioner solicits the sale of chances on its website. Exhibit C-4; NT at 21, 22, 23.
7. Petitioner's website is accessible to the public. Exhibit C-4; NT at 22.
8. Petitioner solicits the sale of chances both to members of Petitioner's organization and to the public. Exhibit C-4; NT at 22, 23, 51.
9. Petitioner's website highlights Petitioner's "numerous guest-oriented functions to assist in raising monies for the community," claims that Petitioner has been a part of assisting the community for over 116 years, and includes a link to at least one charitable organization, the Central Pennsylvania Blood Bank. Commonwealth Exhibit C-4; NT at 20.

10. An IRS 990 form is the public record form filed by nonprofit organizations with the IRS, listing the nonprofit organization's tax information. NT at 15.

11. For the fiscal year ending August 31, 2009, Petitioner's small games of chance gross revenue, as reported on its public record IRS 990 form, was \$1,753,165. Exhibit C-2; NT at 15 – 16, 69.

12. For the fiscal year ending August 31, 2010, Petitioner's small games of chance gross revenue, as reported on its public record IRS 990 form, was \$3,889,335. Exhibit C-3; NT at 15, 17, 55.

13. Petitioner's mission to aid and build the community has benefits to the community generally, those benefits are more widespread than just to Petitioner's members, and the benefits are funded by significant amounts of revenue from small games of chance. Exhibit C-2, C-3 and C-4; NT at 16, 17, 19 – 20, 69, 71.

14. The Bureau sent Petitioner a letter dated August 2, 2011, requesting that Petitioner register with the Bureau or provide evidence demonstrating that Petitioner met an exemption or an exclusion from the Act's registration requirement. Exhibit C-5; NT at 26.

15. The Bureau's August 2, 2011 letter provided Petitioner with 30 days to respond. Exhibit C-5; NT at 26 – 27.

16. Petitioner did not respond to the Bureau's August 2, 2011 letter. NT at 26, 28.

17. The Secretary of the Commonwealth issued a Cease and Desist Order to Petitioner dated September 7, 2011. Exhibit C-6; NT at 28 – 29.

18. Petitioner was served with all pleadings, orders and notices filed of record in this matter, was represented by counsel, and presented evidence at the hearing. Docket No. 0036-98-11;

NT at 6 and *passim*.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. Act at § 4, 10 P.S. § 162.4.
2. Petitioner has received notice of the charges and an opportunity to be heard in this proceeding in accordance with Administrative Agency Law, 2 Pa.C.S. § 504. Finding of Fact 18.
3. Petitioner is a charitable organization because
 - i. Petitioner raises significant amounts of money to aid and build the community by hosting small games of chance such as raffles, bingo and pull tabs;
 - ii. Petitioner solicits the sale of chances both to members of Petitioner's organization and to the public via its publicly accessible website;
 - iii. Petitioner highlights on its website its "numerous guest-oriented functions to assist in raising monies for the community;"
 - iv. Petitioner claims on its website that Petitioner has been a part of assisting the community for over 116 years;
 - v. Petitioner includes on its website a link to at least one charitable organization;and
 - vi. Petitioner's mission produces not just incidental benefits to non-members but has widespread benefits to the community in which both Petitioner's members and the general public alike share.

Findings of Fact 3 – 13.

4. The Cease and Desist Order issued by the Secretary of the Commonwealth dated September 7, 2011 was properly issued to Petitioner. Findings of Fact 3 – 13; Conclusion of Law 3.

DISCUSSION

This is a case in which the Bureau conducted an investigation of Petitioner and determined preliminarily that Petitioner must be registered with the Bureau as a charitable organization. The Bureau then gave Petitioner notice of this preliminary determination, coupled with a 30-day window in which Petitioner could provide evidence demonstrating that it is exempt or excluded from the Act's requirement that it must register with the Bureau. However, Petitioner did not respond in any fashion to the Bureau's letter, and in light of the lack of response, the Secretary issued the Cease and Desist Order dated September 7, 2011. Petitioner then requested a hearing, asserting that it does not solicit funds for charitable purposes.

There is no real factual dispute in this case, and for that reason, the evidence presented at the hearing was straightforward. The Commonwealth's evidence consisted of testimony from Andrew McCole, a Special Investigator with Bureau, and six documents. That evidence demonstrates that Petitioner is not registered as a charitable organization with the Bureau, but that its mission, stated both in its federal tax filings and on its website, is to aid and build the Mechanicsburg community by "providing local community organizations and events with financial support." Petitioner raises money to aid and build the community by hosting small games of chance such as raffles, bingo and pull tabs. Petitioner solicits the sale of such chances on its website, which is accessible to the public, and solicits the sale of chances both to its members and to the public. In fact, for Petitioner's fiscal year ending August 31, 2009, Petitioner's small games of chance gross revenue was \$1,753,165, and for its fiscal year ending August 31, 2010, Petitioner's small games of chance gross revenue was \$3,889,335.

Petitioner's evidence comprised testimony by Matthew Witmer and Scott Joseph Christ, both

Certified Public Accountants who handle Petitioner as their client, and both of whom are members of Petitioner. Their factual testimony essentially supported the factual evidence which the Commonwealth presented. However, they were also asked their opinions about whether Petitioner is required to register with the Bureau and both opined that Petitioner is not.

Under § 5(a) of the Act, 10 P.S. § 162.5(a), a charitable organization is required to file a registration statement with the Department unless the charitable organization is exempt from the Act's registration requirements. Section 5(a), 10 P.S. § 162.5(a), provides in pertinent part as follows:

§ 162.5. Registration of charitable organizations; financial reports; fees; failure to file

(a) **Registration and approval required.**—A charitable organization, unless exempted from registration requirements pursuant to section 6, shall file a registration statement with the department. This statement must be refiled annually within 135 days after the close of its fiscal year in which the charitable organization was engaged in solicitation activities. The department shall review the statement pursuant to subsection (r). No charitable organization shall solicit contributions or have contributions solicited in its behalf before approval of its registration statement by the department.

* * *

Therefore, the first question here is whether Petitioner is a "charitable organization" as the Act defines it:

§ 162.3. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"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. The term shall not be deemed to include:

(1) any bona fide duly constituted organization of law enforcement personnel, firefighters or other persons who protect the public safety whose stated purpose in the solicitation does not include any benefit to any person outside the actual active membership of the organization; and

(2) any bona fide duly constituted religious institutions and such separate groups or corporations which form an integral part of religious institutions, provided that:

(i) such religious institutions, groups or corporations are tax exempt pursuant to the Internal Revenue Code of 1986;

(ii) no part of their net income inures to the direct benefit of any individual; and

(iii) their conduct is primarily supported by government grants or contracts, funds solicited from their own memberships, congregations or previous donors, and fees charged for services rendered.

* * *

The definition of "charitable organization" in the Act also incorporates the terms "person," "charitable purpose" and "solicitation." For that reason, all of those definitions, also found in the Act at § 3, 10 P.S. § 162.3, become relevant because they outline the elements which must be present for an entity to be a "charitable organization" that is required to register with the Bureau under the Act. These definitions are as follows:

* * *

"CHARITABLE PURPOSE." Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental

conservation, civic or other eleemosynary objective, including an objective of any bona fide duly constituted organization of law enforcement personnel, firefighters or other persons who protect the public safety if a stated purpose of the solicitation includes any benefit to any person outside the actual active membership of the organization.

* * *

"PERSON." Any individual, organization, corporation, association, partnership, trust, foundation or any other entity however styled.

* * *

"SOLICITATION." Any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose, including, but not limited to, any of the following:

(1) Any oral request that is made in person, by telephone, radio or television or other advertising or communication media.

(2) Any written or otherwise recorded or published request that is mailed, sent, delivered, circulated, distributed, posted in a public place or advertised or communicated by press, telegraph, television or any other media.

(3) Any sale of, offer or attempt to sell any advertisement, advertising space, sponsorship, book, card, chance, coupon, device, food, magazine, merchandise, newspaper, subscription, ticket or other service or tangible good, thing or item of value.

(4) Any announcement requesting the public to attend an appeal, assemblage, athletic or competitive event, carnival, circus, concert, contest, dance, entertainment, exhibition, exposition, game, lecture, meal, party, show, social gathering or other performance or event of any kind.

* * *

Based on the Act's definitions, the elements which an entity must meet to be considered a "charitable organization" are the following. First, the entity must be a "person," which is "[a]ny individual, organization, corporation, association, partnership, trust, foundation or any other entity,

however styled.” § 3, 10 P.S. § 162.3. Second, the person must be one of three types: (1) one who has been granted tax exempt status under section 501(c)(3) of the federal Internal Revenue Code; (2) one who is or holds himself out to be established for any charitable purpose; or (3) one 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. *Id.*

The evidence in the record demonstrates without question that Petitioner meets the first element in that Petitioner, as a corporation, clearly falls within the Act’s definition of “person.” However, an examination of the second element leads to the conclusion that Petitioner is not the first type of person contemplated by the definition of “charitable organization,” because Petitioner is not a person who has been granted tax exempt status under section 501(c)(3) of the federal Internal Revenue Code. The question, then, is whether Petitioner meets the second element either by being or holding itself out to be established for any charitable purpose, or by in any manner employing 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.

A “charitable purpose” is “[a]ny benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective...” § 3, 10 P.S. § 162.3. The terms within this definition are not defined in the Act, so it is necessary, under the Statutory Construction Act, 1 Pa. C.S.A § 1501 *et seq.*, to construe them according to their common and approved usage. “Benevolent” is commonly defined as “doing or inclined to do good; kindly; charitable,” WEBSTER’S NEW WORLD DICTIONARY 129 (3d Coll. Ed. 1994). Also, “philanthropic” is commonly defined as “showing or constituting philanthropy,” WEBSTER’S at 1014, “philanthropy” is defined as “a desire to help mankind, esp. as

shown by gifts to charitable or humanitarian institutions,” *id.*, and “civic” is commonly defined as “of a city, citizens, or citizenship.” WEBSTER’S at 256.

The documentary evidence indicates that Petitioner, both on its website and on its filings with the IRS, states that its mission is to aid and build the Mechanicsburg community by “providing local community organizations and events with financial support,” and the hearing testimony also indicates that Petitioner raises money to aid and build the community. From the common dictionary definitions above, it is reasonable to conclude that community-building and raising money to aid and build the community are benevolent, philanthropic, and civic objectives. In other words, community-building and raising money to aid and build the community constitute a charitable purpose within the meaning of the Act. Additionally, it is reasonable to conclude that, by stating this mission on its website, Petitioner, at the very least, holds itself out as being established for a charitable purpose. Therefore, Petitioner meets the elements that make it the second type of person contemplated by the definition of “charitable organization,” i.e. one which holds itself out to be established for any charitable purpose.

Although the analysis could stop there, the evidence also indicates that Petitioner meets the elements of the third type of person contemplated by the definition of “charitable organization,” because Petitioner employs a charitable appeal as the basis of its solicitations or an appeal which has a tendency to suggest there is a charitable purpose to its solicitation. A “solicitation,” as defined in the Act, is any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose, and includes the sale of, offer or attempt to sell chances or tickets. § 3, 10 P.S. § 162.3. As already concluded, Petitioner raises money to aid and build the community, which is a charitable purpose. The evidence further indicates

that Petitioner raises money to aid and build the community by hosting small games of chance such as raffles, bingo and pull tabs, that Petitioner solicits the sale of chances on its website, that Petitioner's website is accessible to the public, and that Petitioner solicits the sale of chances both to members of Petitioner's organization and to the public. Additionally, Petitioner lists on its website at least one charitable organization, the Central Pennsylvania Blood Bank, implying that Petitioner helps that organization as part of Petitioner's assistance to the community. In so doing, Petitioner employs a charitable appeal as the basis of its solicitations, or an appeal which has a tendency to suggest there is a charitable purpose to its solicitations, thereby meeting the criteria for the third type of person contemplated in the definition of "charitable organization."

Petitioner asserts that two cases, *Com., Commission on Charitable Organizations v. Association of Community Organizations for Reform Now (ACORN)*, 463 A.2d 406 (Pa. 1983) and *Com. v. Frantz Advertising, Inc. et al.*, 353 A.2d 492 (Pa. Cmwlth. 1976), compel a different determination in this matter. In *Frantz Advertising*, the Commonwealth Court considered cross-motions for summary judgment in an action brought by the Commonwealth pursuant to a predecessor to the current Act, the Solicitation of Charitable Funds Act,¹ seeking, among other things, to declare that the Fraternal Order of Police, Fort-Pitt Lodge No. 1 (F.O.P.), was a charitable organization within the meaning of the Act. The Commonwealth Court, in deciding the motions for summary judgment, stated that

We cannot find, therefore, that the F.O.P. "is" [sic] a charitable organization, for its benefits are not applied for the advantage of an indefinite number of persons as would be the case if the public were to benefit.

¹Act of August 9, 1963, P.L. 628, as amended, 10 P.S. § 160-1 *et seq.*, repealed by The Charitable Organization Reform Act, Act of April 30, 1986, P.L. 107, No. 36, 10 P.S. § 161.1 *et seq.*, repealed by The Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, 10 P.S. § 162.1 *et seq.*

Frantz Advertising, 353 A.2d at 496 – 497. However, the Commonwealth Court also stated that

The Act, however, defines a charitable organization not only as one which “is” [sic] charitable in fact but also in the alternative as one which “holds itself out to be” such an organization.

Frantz Advertising, 353 A.2d at 497. And on the issue of whether the F.O.P. held itself out as a charitable organization, the Commonwealth Court determined that there appeared to be genuine issues of material fact that must be resolved at trial and denied the applicable motions for summary judgment, returning the matter to the trial court. *Id.*

In the *ACORN* case, the Supreme Court considered whether, under the Solicitation of Charitable Funds Act, the same predecessor statute under consideration in the *Frantz Advertising* case, ACORN, a national non-profit corporation with the purpose of enhancing the quality of neighborhoods, met the definition of “charitable organization.” The Supreme Court referred to the Commonwealth Court’s *Frantz Advertising* opinion in arriving at a decision in the *ACORN* case and adopted the following test, which the Commonwealth Court had enunciated, for determining whether an organization is a charitable organization for purposes of registration under the Solicitation of Charitable Funds Act:

an organization is not charitable where it exists solely for the benefit of its membership, with whatever benefits that may attach to non-members being incidental and not controlling.

ACORN, 463 A.2d at 408.

As it applied this test from *Frantz Advertising*, however, the Supreme Court considered as definitive both ACORN’s admitted purpose of enhancing the quality of neighborhoods and ACORN’s solicitation of funds from the general public by distributing pamphlets to potential contributors in which ACORN claimed that it had won countless neighborhood improvements

throughout Philadelphia. The Court characterized those countless neighborhood improvements throughout Philadelphia as “widespread benefits” which

can not [sic] be said to accrue only to ACORN members. Rather, ACORN members and the general public alike share in these civic improvements.

ACORN, 463 A.2d at 408. Therefore, the Court concluded that ACORN was a charitable organization within the meaning of the Solicitation of Charitable Funds Act and subject to the registration requirements of that act. *Id.*

Neither of these cases supports Petitioner’s argument that it is exempt from registration under the present Act. The *Frantz Advertising* case addressed only the question of whether the F.O.P. was a charitable organization in fact; it did not address the statute’s definitional alternative of an organization which *holds itself out as* a charitable organization. *Frantz Advertising*, 353 A.2d at 497. The present Act contains that same definitional alternative. Since, as determined above, Petitioner in this matter holds itself out as being established for a charitable purpose by stating on its website and in public IRS filings that its mission is to aid and build the Mechanicsburg community by providing local community organizations and events with financial support, that alternative definition of “charitable organization” applies to Petitioner regardless of the ruling in the *Frantz Advertising* case.

Moreover, the Supreme Court’s determination in the *ACORN* case actually supports the Commonwealth’s position in this case because the facts of this case parallel the facts in the *ACORN* matter. ACORN’s purpose was to enhance the quality of neighborhoods. Petitioner’s stated mission is to aid and build the Mechanicsburg community by providing local community organizations and events with financial support. ACORN solicited funds from the general public by distributing

pamphlets to potential contributors in which ACORN claimed that it had won countless neighborhood improvements throughout Philadelphia. Petitioner raises money to aid and build the community by hosting small games of chance such as raffles, bingo and pull tabs. It does so by soliciting the sale of chances both to members of Petitioner's organization and to the public via its website, which is accessible to the public, highlights Petitioner's "numerous guest-oriented functions to assist in raising monies for the community," claims that Petitioner has been a part of assisting the community for over 116 years, and includes a link to at least one charitable organization, the Central Pennsylvania Blood Bank. ACORN's activities produced widespread benefits, in the form of civic improvements in which ACORN members and the general public alike could share. Petitioner's activities "aid and build the community," which clearly has benefits more widespread than just to Petitioner's members. Indeed, the Central Pennsylvania Blood Bank is clearly of benefit to a wider population than just Petitioner's members. Nor can such benefits, which have been funded in one year by Petitioner's small games of chance gross revenue of \$1,753,165, and in another by Petitioner's small games of chance gross revenue of \$3,889,335, be considered "incidental" when such large amounts are raised to put toward them. Accordingly, based on these facts, which are closely analogous to the facts in *ACORN*, Petitioner is a charitable organization under the *ACORN* test.

Under § 5(a) of the Act, 10 P.S. § 162.5(a), a charitable organization, unless exempted from registration requirements, shall file a registration statement with the Department, and no charitable organization is permitted to solicit contributions or have contributions solicited on its behalf before approval of its registration statement by the Department. Petitioner has provided no evidence to indicate that it is exempt from the registration requirements of § 5(a). In the absence of any such

evidence, and because Petitioner meets the definition of "charitable organization," Petitioner must, pursuant to § 5(a), register with the Department and must refrain from soliciting contributions until the Department has approved its registration statement.

Additionally, the Act at § 15(a)(1), 10 P.S. § 162.15(a)(1), specifically prohibits a person from operating in violation of, or failing to comply with, any of the requirements of the Act.² Based on the evidence adduced at the hearing, Petitioner has violated that provision as well. Accordingly, taking into consideration all of the facts in this matter, Petitioner is required to be registered, has violated § 15(a)(1), 10 P.S. § 162.15(a)(1), by soliciting contributions in the Commonwealth without being registered with the Department, and continues to violate that provision so long as it continues to operate in the same fashion.

When the Secretary finds that a charitable organization has violated any of the provisions of the Act, the Secretary is authorized to enforce the Act against Petitioner pursuant to § 17, 10 P.S. § 162.17,³ which provides, among other things, for the issuance of an order directing that the person

²Section 162.15. 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.

* * *

³Section 162.17. 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.

cease and desist specified fundraising activities. See § 17(b)(2), 10 P.S. § 162.17(b)(2). Therefore, the Order of September 7, 2011 was properly issued, in that the Act at § 17 authorizes the order in a fact situation such as the Commonwealth has established here. The Act also authorizes the imposition of an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of the Act, and an additional penalty, not to exceed \$100 for each day during which such violation continues. § 17(b)(3), 10 P.S. § 162.17(b)(3). In order to allow Petitioner the opportunity to come into compliance without further penalty, no civil penalty will be imposed at this point. However, should Petitioner continue to fail to comply with the Act, it may be subject to further action under § 17(b)(3), 10 P.S. § 162.17(b)(3). Accordingly, the following order shall issue:

(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:

- (1) Revoke a grant of exemption to any of the provisions of this act.
- (2) Issue an order directing that the person cease and desist specified fundraising activities.
- (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.
- (4) Place the registrant on probation for such period of time and subject to such conditions as he may decide.

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

In the Matter of the Appeal :
of the Mechanicsburg Club, Petitioner, : Docket no. 0036-98-11
from the Secretary's Cease and Desist Order : File no. 11-98-09358
dated September 7, 2011 :

ORDER

AND NOW, this 27th day of February, 2012, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Secretary finds that Petitioner The Mechanicsburg Club is a charitable organization and has solicited contributions in the Commonwealth of Pennsylvania while it was not registered. In accordance with the Pennsylvania Solicitation of Funds for Charitable Purposes Act, 10 P.S. § 162.1 *et seq.*, Petitioner is ORDERED to CEASE AND DESIST from soliciting contributions in the Commonwealth of Pennsylvania until such time as Petitioner has duly registered with the Bureau of Charitable Organizations.

Additionally, Petitioner may be subject to administrative fines of up to \$1000 per violation and \$100 for each day the violation continues, and failure to comply with this Order shall constitute a violation of an order issued by the Secretary, subjecting Petitioner to additional penalties under the Act at § 17, 10 P.S. § 162.17.

Appeal may be taken pursuant to the Act at § 17(c), 10 P.S. § 162.17(c), and 2 Pa. C.S. § 702, within 30 days of the date of mailing of this Adjudication and Order as indicated below.

BY ORDER



Carol Aichele
Secretary of the Commonwealth

For the Commonwealth:

Jacquelyn Pfursich, Esquire
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
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For Petitioner:

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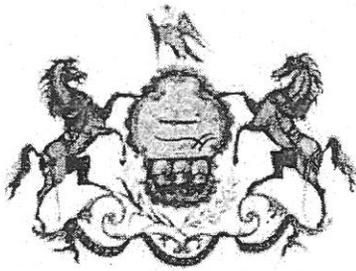
Date of mailing:

February 27, 2012

NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Secretary of the Commonwealth with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Pennsylvania Department of State
Office of Chief Counsel
Legal Counsel, Bureau of Charitable Organizations
401 North Street
Room 301
Harrisburg, PA 17120



The Mechanicsburg Club

DOCKET NO. -98-14
FILE NO. 14-98-06090

ORDER

AND NOW, this 23RD day of OCTOBER 2014 the foregoing Consent Agreement is approved and the terms set forth in paragraph 5 are hereby adopted and incorporated herein as the Order of the Secretary of the Commonwealth issued in resolution of this matter.

THIS ORDER shall take effect immediately.

BY ORDER

A handwritten signature in cursive script that reads "Carol Aichele".

Carol Aichele
Secretary of the Commonwealth

For the Commonwealth:

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Date of mailing: October 27, 2014