

COPY

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

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Department of State

**Commonwealth of Pennsylvania,
Bureau of Corporations and
Charitable Organizations**

v.

**Jackson Township Volunteer Fire
Company
Respondent**

File No. 19-98-009291

FINAL ADJUDICATION AND ORDER

**Kathy Boockvar
Secretary of the Commonwealth**

**302 North Office Building
Harrisburg, PA 17120**

9171 9690 0935 0196 2221 15

HISTORY

This matter comes before the Secretary of the Commonwealth ("Secretary") pursuant to the Solicitation of Funds for Charitable Purposes Act ("Act"), Act of December 19, 1990, P.L. 1200, No. 202, *as amended*, 10 P.S. § 162.1 *et seq.*, on two appeals filed by the Jackson Township Volunteer Fire Company ("Respondent"). The first appeal was from a letter dated June 5, 2019 ("BCCO's letter"), issued by the Department of State's Bureau of Corporations and Charitable Organizations ("BCCO"). The BCCO's letter denied Respondent's request for exemption from registration with the BCCO under the Act, based on the BCCO's determination that Respondent is not exempt from having to register. The BCCO's letter also directed Respondent to proceed to register with the BCCO unless Respondent can provide documentation that sufficiently addresses those issues, and indicated that Respondent should not conduct any further solicitations in Pennsylvania until it has confirmation that the BCCO has approved its registration.

The second appeal was from a Cease and Desist Order ("C&D Order") dated April 23, 2019, which the then-Acting Secretary issued against Respondent based on Respondent's failure to register with the BCCO and/or failure to submit requested documentation to the BCCO when Respondent was soliciting charitable contributions in Pennsylvania. The C&D Order ordered Respondent, pursuant to the Act, to cease and desist from soliciting contributions or performing as a charitable organization until such time as it provides the BCCO with all previously requested information and duly registers, or provides information that it is excluded or exempt from registration, as determined by the BCCO.

By letter dated June 19, 2019, Respondent appealed the BCCO's letter. Also, by letter dated June 28, 2019, Respondent appealed the C&D Order. A Notice of Hearing scheduled a

hearing for September 9, 2019, and the hearing occurred as scheduled. Respondent was represented at the hearing by William Gleason Barbin, Esquire, while the Commonwealth was represented by Michael J. Gennett, Esquire. At the conclusion of the hearing, the parties declined to file post-hearing briefs, and the record was closed with the filing of the hearing transcript ("Notes of Testimony") on September 27, 2019.

FINDINGS OF FACT

1. Jackson Township Volunteer Fire Company (Respondent) is a volunteer fire company and ambulance service located in Cambria County, Pennsylvania, designated by Jackson Township to supply fire, rescue and ambulance services to Jackson Township; Respondent provides the same services to other local municipalities as well. (Respondent's Exhibit 2;¹ Notes of Testimony ("NT") at 8, 9, 11, 18)
2. Respondent is a nonprofit corporation formed on April 3, 1944, for the purpose of "protect[ing] the lives and property of the residents of Jackson Township, Cambria County, Pennsylvania, and vicinity, from injury or damage by fire or other catastrophe." (Exhibit C-2)
3. Respondent's bylaws further state that "the object [of the Fire Company] shall be the extinguishments of fires and the protection of life and property." (Exhibit C-2)
4. Respondent obtained exemption from federal income tax under Internal Revenue Code Section 501(c)(3)², effective October 18, 2016, because that status makes it easier to obtain some funding grants. (Exhibit C-2; NT at 9, 15, 18)
5. To obtain 501(c)(3) status, Respondent had to amend its bylaws to make it clear that the funds of the organization cannot go to any members. (NT at 15-16)
6. Respondent is not registered with the Pennsylvania Department of State's Bureau of Corporations and Charitable Organizations to solicit charitable contributions in Pennsylvania. (Exhibit C-3; Exhibit C-4)

¹As attached to the Notes of Testimony, this exhibit is designated "2 Township," but because no township was a party to this proceeding, it is more accurately referred to as "Respondent's Exhibit 2," and this decision will use that name for it. The same is true of Respondent's first exhibit. It is designated "1 Township," but is more accurately referred to as "Respondent's Exhibit 1," and this decision will use that name for it.

² 26 U.S.C. § 501(c)(3).

7. Respondent has approximately 48 active members who actually provide fire and rescue services; to be an active member, an individual must, among other things, participate in 40% of Respondent's fundraising activities. (NT at 8, 16-17)
8. Respondent also has social members, who help out with fundraisers. (NT at 8, 17)
9. All of Respondent's active members and social members are volunteers. (NT at 8-9, 17)
10. Respondent also operates two ambulances, which under Department of Health requirements must be staffed 24 hours a day with a paramedic and emergency medical service technician ("EMT"); to staff the ambulance with those individuals, Respondent pays them. (NT at 9-10)
11. Almost all of Respondent's annual budget comes from donations and fundraising; only about two percent is funded by grants and taxes. (NT at 12, 19)
12. At the time of the hearing, Respondent had been utilizing the services of Municipal Marketing Services ("MMS"), a registered professional fundraising counsel in the Commonwealth, for approximately 10 years. (NT at 12, 15, 20)
13. Respondent utilizes the services of MMS for two fund drives per year, one for Respondent's EMS/ambulance services, and one for Respondent's fire company services. (NT at 20)
14. For each fund drive, MMS provides a mailing program comprising a one-sided, full color newsletter/donation request/membership card combination form, a #10 full window envelope and a custom MMS window reply envelope, as the original mailing, as well as related services from MMS that include bar-coding, envelope stuffing, collating, mail preparation, file

maintenance, mailing list maintenance, and reports to Respondent, as needed, of donors and amounts of donations. (Respondent's Exhibit 1; NT at 12, 14, 15, 20-21)

15. MMS charges Respondent 70 cents per mailing, with the number of mailings fluctuating between 2,070 and 2,080, and Respondent pays MMS a lump sum on that basis; Respondent pays nothing else to MMS, and Respondent pays the postage on the mailings directly to the postmaster. (Respondent's Exhibit 1; NT at 13, 20)

16. On July 17, 2018, through Invoice #2018-2559, MMS billed Respondent \$1,455.30 for the above-described services related to 2,079 such mailings, at the rate of 70 cents each; the service date was May 22, 2018. (Respondent's Exhibit 1; NT at 13)

17. Monies donated to Respondent in response to the MMS mailings on Respondent's behalf are returned directly to Respondent; no monies are sent to MMS from the fund drives. (NT at 14)

18. Respondent works with an unnamed person who helps Respondent write summaries for grant proposals, who is "used to doing work like that." (NT at 19-20)

19. This individual is not an active member of Respondent volunteer fire company and is paid for his assistance with grant-writing. (NT at 19-20)

20. Respondent contracts with Wally Hines,³ of Wally Hines Photography, for an annual fundraiser for the fire company. (NT at 21-22, 25)

21. Wally Hines Photography is a name used by HP Direct Marketing Services, a professional solicitor currently registered with the Bureau of Corporations and Charitable

³ The Notes of Testimony incorrectly spell "Hines" as "Hines" throughout. This decision will use the correct spelling.

Organizations of the Department of State and registered without interruption since July 11, 2018.
(Official notice)⁴

22. A contract between Respondent and HP Direct Marketing Services for professional solicitor services, commencing on July 31, 2018 and terminating December 31, 2018, was filed with BCCO. (Exhibit C-1)

23. For this annual fundraiser for the fire company, Mr. Hines sends a letter out to Jackson Township residents, for which he provides the postage, in which he offers donors a free individual or family portrait in exchange for a donation to Respondent. (NT at 22, 23-24)

24. While no amount of donation is specified for this fundraiser, the "suggested donation" is \$40. (NT at 23-24)

25. The donations received go to Respondent's treasurer, who provides the donor information to Mr. Hines, and Mr. Hines telephones the donors, asking if they would like to set up an appointment at the fire hall, where the photography occurs, for their free portrait. (NT at 22-23, 24)

26. Respondent splits the donations received with Mr. Hines, with Respondent receiving 60% and Mr. Hines receiving 40%. (NT at 24-25)

27. On January 25, 2019, Respondent submitted a Request for Approval of Exemption/Exclusion ("January 25, 2019 BCO-9") to the BCCO, seeking an exemption from the

⁴ Official notice is taken of the records of the Bureau of Corporations and Charitable Organizations pertaining to registrations on file with the Bureau. Such official notice is taken in accordance with the rule that an agency may take official notice of its own records. General Rules of Administrative Practice and Procedure ("General Rules"), 1 Pa. Code § 31.1 et seq., at § 35.173; see also *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (the doctrine of official notice allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files); *Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007) (licensing board may take official notice of its own records).

registration requirements of the Act based on Respondent's being an "organization of law enforcement personnel, firefighters or other persons who protect the public safety." (Exhibit C-2)

28. By letter dated March 14, 2019, the BCCO indicated that it had reviewed Respondent's January 25, 2019 BCO-9 and based on the representations made in it, could not determine if Respondent is excluded from having to register because it is a 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; the BCCO requested additional information and indicated that Respondent had marked the wrong exclusion on the January 25, 2019 BCO-9. (*Id.*)

29. On April 23, 2019, the then-Acting Secretary issued a Cease and Desist Order ("C&D Order") against Respondent based on Respondent's failure to register with the BCCO and/or failure to submit requested documentation to the BCCO when Respondent was soliciting charitable contributions in Pennsylvania. (Exhibit C-4)

30. The C&D Order ordered Respondent, pursuant to the Act, to cease and desist from soliciting contributions or performing as a charitable organization until such time as it provides the BCCO with all previously requested information and duly registers, or provides information that it is excluded or exempt from registration, as determined by the BCCO. (*Id.*)

31. On or about May 30, 2019, Respondent submitted a revised Request for Approval of Exemption/Exclusion ("May 30, 2019 BCO-9") to the BCCO, seeking an exemption from the registration requirements of the Act based on Respondent's being a "veterans' organization chartered under federal law, volunteer fire company, ambulance association, rescue squad association and any auxiliary or affiliate thereof." (Exhibit C-1)

32. By letter dated June 5, 2019, the BCCO notified Respondent that the BCCO had reviewed the May 30, 2019 BCO-9 and determined that Respondent is not exempt from having to register because Respondent (1) is not a veterans' organization chartered under federal law, or (2) is not recognized by the bylaws of such an organization, and/or (3) it compensated someone to provide fundraising activities. (Exhibit C-3)

33. The BCCO's letter also directed Respondent to proceed to register with the BCCO unless Respondent can provide documentation that sufficiently addresses those issues, and indicated that Respondent should not conduct any further solicitations in Pennsylvania until it has confirmation that the BCCO has approved its registration. (*Id.*)

34. By letter dated June 19, 2019, Respondent appealed the BCCO's letter. Official notice of BCCO records (Official notice).

35. By letter dated June 28, 2019, Respondent appealed the C&D Order. (Official notice)

36. Respondent was served with all pleadings, orders and notices filed of record in this matter, was represented by counsel at a hearing on its appeals conducted on September 9, 2019, presented evidence on its behalf, and had the opportunity to file a post-hearing brief. (NT at 5 and *passim.*)

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter. (10 P.S. § 162.4)
2. Appellant 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. § 504. (Findings of Fact 27-36)
3. Appellant is a “charitable organization” as it is defined by the Act in section 3; 10 P.S. § 162.3. (Findings of Fact 1-5)
4. Because Appellant engaged in fundraising activities that were not carried on solely by its members, volunteers, auxiliary or affiliates and compensated both professional fundraising counsel and professional solicitor for fundraising activities, Appellant is not exempt from registration under the Act at section 6(a)(3), 10 P.S. § 162.6(a)(3). (Findings of Fact 1-26)
5. Because Appellant is a charitable organization that is not exempt from registration under the Act and Appellant has not registered with the BCCO, the C&D Order was properly issued in accordance with section 17(b)(2) of the Act, 10 P.S. § 162.17(b)(2), and Appellant has violated the Act at section 5(a), 10 P.S. § 162.5(a), by soliciting funds from Pennsylvania citizens without having an approved registration statement filed in the Department of State. (Findings of Fact 1-26)

DISCUSSION

Preliminary matter – Consolidation

As indicated in the Findings of Fact, the then-Acting Secretary issued the C&D Order against Respondent on April 23, 2019. The C&D Order was issued under File No. 18-98-10674. Subsequently, by letter dated June 28, 2019, Respondent appealed the C&D Order at File No. 18-98-10674. However, the June 28, 2019 appeal letter was not filed with the Office of Prothonotary until September 11, 2019. Notably, the Commonwealth moved both the C&D Order and the June 28, 2019 letter into evidence at the hearing, without objection from Respondent.

On September 11, 2019, two days after the hearing concluded in the matter at File No. 19-98-009291, Respondent's June 28, 2019 appeal letter under File No. 18-98-10674 was filed with the Prothonotary. At that time, the hearing examiner determined, based on the fact that the June 28, 2019 appeal letter, appealing the C&D Order, used language nearly identical to the June 19, 2019 letter, appealing the BCCO's June 5, 2019 determination, that the two matters under the two separate file numbers were substantially identical, in terms of issues and the relief requested, so that they could be combined and resolved together, under a single file number. Accordingly, the contents of File No. 18-98-10674 were added to File No. 19-98-009291, and File No. 18-98-10674 was closed administratively.

Setting aside considerations of whether Respondent's June 28, 2019 appeal of the April 23, 2019 C&D Order was timely (since the appeal letter was dated more than 60 days after the C&D Order, which is longer than any appeal period set forth in the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*), both matters involve common questions of law and a single set of facts, making resolution in one decision fair to all parties

while avoiding unnecessary costs or delay. *See* 1 Pa. Code § 35.45. Accordingly, Respondent's two appeals are consolidated here, and both the C&D Order and the BCCO's denial of exemption from registration are addressed in this decision.

Substantive issues

In this case, Respondent asserts that it is exempt from registration with the BCCO under section 6(a)(3)(ii) of the Act, 10 P.S. § 162.6(a)(3)(ii). During the hearing, Respondent conceded that it clearly was engaged in fundraising activity. (NT at 38.) Moreover, none of the facts to which Respondent's witness testified were in dispute or in any way contradicted by the Commonwealth. This case is, therefore, really just an examination of the legal issues related to interpretation of the various provisions of the Act implicated by the facts.

Under the Act, a "charitable organization" is defined in section 3, in pertinent part, as follows:

Charitable Organization. Any person⁵ 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. . . The term shall *not* be deemed to include

(1) any bona fide duly constituted organization of. . . 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;*

10 P.S. § 162.3 (emphasis added). This definition provides several different, *alternative*, criteria for being a "charitable organization." First, a person granted 501(c)(3) tax-exempt status is a "charitable organization." Second, a person who is or holds himself out to be established for any

⁵ The Act's definition of "person" includes "individual, organization, corporation, association, partnership, trust, foundation or any other entity however styled," so the term applies to Respondent. (10 P.S. § 162.3)

charitable purpose is a “charitable organization.” Third, a 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, is a “charitable organization.” To meet this definition, the person only has to meet one of these criteria, not all of them, because they are phrased in the alternative, by use of the disjunctive “or.”

Notably, this definition of “charitable organization” enumerates several specific exclusions, one of which is relevant here. The relevant exclusion exists when the person is a bona fide organization of firefighters whose purpose in soliciting funds is solely to benefit the actual active membership *inside* the organization. In those circumstances, the person is *not* deemed to be a charitable organization. 10 P.S. § 162.3 (See definition of “charitable organizations,” subparagraph (1)).

Here, Respondent has 501(c)(3) tax-exempt status, which fits Respondent squarely within the first criterion, making Respondent a “charitable organization” unless Respondent fits the exclusion in subparagraph (1) of the definition. But the evidence does not support Respondent’s fitting within this exclusion. Based on the record from the hearing, the evidence indicates that Respondent is a bona fide organization of firefighters. However, as indicated in its articles of incorporation, Respondent was formed for the purpose of benefiting the community around it (“protect[ing] the lives and property of the residents of Jackson Township, Cambria County, Pennsylvania, and vicinity, from injury or damage by fire or other catastrophe.”) Additionally, Respondent’s witness testified that, to obtain its 501(c)(3) status, Respondent had to amend its bylaws to make it clear that the funds of the organization cannot go to any members. Based on these facts, Respondent’s solicitations are – and must be – aimed at benefiting persons *outside* Respondent’s organization, rather than its actual active membership.

Therefore, Respondent falls within the Act's definition of "charitable organization," and the exclusionary language in subparagraph (1) of the definition does not apply. Indeed, Respondent's argument in its June 28, 2019 appeal letter (*see* page 2, last full paragraph), is consistent with this determination.⁶

As a charitable organization, then, Respondent is subject to section 5(a) of the Act, which provides, in pertinent part, as follows:

§ 162.5(a). 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. . . . No charitable organization shall solicit contributions or have contributions solicited in its behalf before approval of its registration statement by the department.

10 P.S. § 162.5(a). This is where the issue in this case arises: Respondent claims that it is exempt from registration, as required under section 5, because it meets the exemption set forth in section 6(a)(3)(ii) of the Act.

Section 6(a)(3)(ii) provides, in pertinent part, as follows:

§ 162.6. Exemptions from registration

(a) General rule. The following charitable organizations shall be exempt from the registration requirements of this act:

* * *

(3) A local post, camp, chapter or similarly designated element or a county unit of such elements of:

* * *

⁶ "The Jackson Township Volunteer Fire Company's purpose is to benefit the public through the provision of fire suppression[,] rescue and other emergency services. The Bylaws of the Jackson Township Volunteer fire[sic] Company were recently amended to make it clear that no property or assets of the organization can be used for the benefit of an individual member."

(ii) a bona fide organization of volunteer firemen;

* * *

provided that all fundraising activities of an organization or association under subparagraph (i), (ii), (iii), (iv) or (v) are carried on by volunteers, members of an auxiliary or affiliate thereof, and those volunteers, members or affiliates receive no compensation directly or indirectly for the fundraising activities.

10 P.S. § 162.6(a)(3)(ii) (emphasis added). The proviso at the end of section 6(a)(3), 10 P.S. § 162.6(a)(3), is significant, because it dictates that the charitable organization is exempt from registration *provided that* the charitable organization carries on all of its fundraising activities by volunteers, members, an auxiliary or affiliate, and those volunteers, members, auxiliary or affiliate receive no compensation, directly or indirectly, for the fundraising activities.

As mentioned above, Respondent did not deny that it engaged in fundraising activity (NT at 38) and that is significant. The term “fundraising activities” is not defined in the Act, but the Commonwealth Court has defined it in a previous case with parallel facts, *Colmar Volunteer Fire Co. v. Dep’t of State, Bureau of Charitable Orgs.*, 949 A.2d 970 (Pa. Cmwlth. 2008). In *Colmar*, the Commonwealth Court determined that “fundraising activities” include a professional fundraising counsel’s activities, such as stuffing envelopes with solicitations and maintaining a database of addresses; the Commonwealth Court also stated that any activities in which volunteers engage, in an attempt to encourage others to contribute to the charitable sponsors of events such as charitable car washes or spaghetti dinners, are also “fundraising activities.” *Id.* at 975. Therefore, the use of professional fundraising counsel in direct mailing campaigns precluded Colmar from qualifying for the exemption from registration under section 6(a)(3)(ii), 10 P.S. § 162.6(a)(3)(ii). *Colmar* at 975 – 976.

The evidence here indicates that Respondent engaged and paid MMS, a professional fundraising counsel, to engage in activities including stuffing envelopes with solicitations and maintaining a database of donors' addresses and donations. Therefore, the *Colmar* case is directly on point with this case and governs the outcome. As in *Colmar*, Respondent's use of professional fundraising counsel in direct mailing campaigns precludes Respondent from qualifying for the exemption from registration under section 6(a)(3)(ii), 10 P.S. § 162.6(a)(3)(ii).

In addition, the evidence indicates that Respondent engages Wally Hines Photography for an annual fundraiser. For this fundraiser, Mr. Hines sends a letter out to Jackson Township residents, for which he provides the postage, offering donors a free individual or family portrait in exchange for a donation to Respondent; no amount of donation is specified. The donations received go to Respondent's treasurer, who provides the donor information to Mr. Hines, and Mr. Hines telephones the donors, asking if they would like to set up an appointment at the fire hall, where the photography occurs, for their free portrait. These actions by Mr. Hines are the type of activities in which volunteers typically engage in an attempt to encourage others to contribute to the charitable sponsors of events; his activities are analogous to the charitable car washes or spaghetti dinners referenced by the court in *Colmar*. By the logic of *Colmar*, then, Mr. Hines was also engaged in "fundraising activities" on Respondent's behalf. *Colmar*, 949 A.2d at 975.

Moreover, Respondent splits the donations received with Mr. Hines, with Respondent receiving 60% and Mr. Hines receiving 40%. That means that those particular fundraising activities are not carried on by volunteers, members or affiliates *who receive no compensation directly or indirectly from the fundraising activities*. To the contrary, Mr. Hines receives compensation directly from the fundraising activities – 40% of the funds raised. Accordingly, the

fundraising activities conducted by Respondent in conjunction with Mr. Hines also bring Respondent outside the proviso that is in integral part of the exemption under section 6(a)(3)(ii), 10 P.S. § 162.6(a)(3)(ii), so Respondent no longer qualifies for that exemption.⁷

In arguing, at the close of the hearing, that Respondent meets this exemption, Respondent asserted that the proviso language applies only to subparagraph (v) of section 6(a)(3), 10 P.S. § 162.6(a)(3), so that only auxiliaries or affiliates of the organizations listed in subparagraphs (i) through (iv), rather than the organizations themselves, are subject to that proviso. NT at 40 – 41.⁸ However, that interpretation makes no sense in light of the fact that the proviso, by its own terms, applies to “all fundraising activities of an organization or association under subparagraph (i), (ii), (iii), (iv) or (v). . .” Clearly, the proviso does not apply just to subparagraph (iv); to read it that way would totally ignore the proviso’s enumeration of subparagraphs (i), (ii), (iii) and (v). And it is never permissible to ignore the plain language of a statute. *Reese v. Hemphill*, 191 A.2d 835 (Pa. 1963) (every word, sentence or provision of a statute must be given effect in construing a statute). Therefore, this argument is rejected.

In support of its argument for exemption, Respondent also asserted that section 8(d)(1) of the Act, which provides that contracts between charitable organizations and professional fundraising counsel shall contain the “legal name and address of the charitable organization as

⁷ While not discussed at the hearing, the record at Exhibit C-1 contains a BCCO certification that a contract between Respondent and HP Direct Marketing Services for professional solicitor services from July 31-December 31, 2018, was filed with the Department. This alone is evidence that Respondent is not carrying on all fundraising activities by members and volunteers alone. Wally Hines Photography is a name used by HP Direct Marketing Services, a professional solicitor currently registered with the Bureau of Corporations and Charitable Organizations of the Department of State and registered without interruption since July 11, 2018.

⁸ In some versions of section 6(a)(3) of the Act, 10 P.S. § 162.6(a)(3), such as that available on LEXIS, the proviso is positioned in such a way as to make it appear to be a part of subparagraph v, rather than part of the broader subparagraph (3). Perhaps this is the origin of Respondent’s argument. However, in the original enactment (Act 202 of 1990), the proviso clearly falls within the broader subparagraph (3), as set forth in this decision, above.

registered with the department *unless that charitable organization is exempt from registration,*” 10 P.S. § 162.8(d)(1) (emphasis added), contemplates an exempt charitable organization’s being permitted, under the Act, to utilize professional fundraising counsel without losing the exemption. See June 28, 2019 appeal letter, page 3, first full paragraph. But in making this argument, Respondent reads the exemptions set forth in section 6(a), 10 P.S. § 162.6(a), as if they were all phrased in the same way, when, in point of fact, they are not.

An examination of the individual subparagraphs of section 6(a), 10 P.S. § 162.6(a), yields the observation that the exemptions at section 6(a)(3), (5) and (8), 10 P.S. § 162.6(a)(3), (5), and (8) all contain provisos which, in essence, indicate that the exemption is available only when the charitable organization meets those provisos. In other words, the provisos make those exemptions conditional, which means they can be lost if the charitable organization no longer meets the conditions set out in the proviso. On the other hand, the exemptions in section 6(a)(1), (2), (4), (6) and (7), 10 P.S. § 162.6(a)(1), (2), (4), (6) and (7), do not include any provisos. Thus, they are absolute rather than conditional, and cannot be lost.

It is a fundamental rule of statutory construction that, where the legislature includes specific language in one portion of a statute and excludes it from another, it should not be implied where it has been excluded. *Patton v. Republic Steel Corp.*, 492 A.2d 411, 415 (Pa. Super. 1985). Therefore, the differences in language among the various exemptions set forth in the subparagraphs of section 6(a), 10 P.S. § 162.6(a), are significant and must be given effect. *C.f. Kusza v. Maximonis*, 70 A.2d 329 (Pa. 1950) (court cannot, under its powers of construction, supply omissions in a statute, especially where it appears that the matter may have been intentionally omitted). By necessity and the rules of statutory construction, the language Respondent cites in section 8(d)(1), 10 P.S. § 162.8(d)(1), must be taken to refer to charitable

organizations which possess the absolute exemption under section 6(a)(1), (2), (4), (6) and (7), 10 P.S. § 162.6(a)(1), (2), (4), (6) and (7).

The determination in *Colmar, supra*, where the fire company lost its exemption based on its use of professional fundraising counsel, serves as a further significant counterweight to Respondent's argument. Accordingly, no credence can be given to Respondent's argument that the phrasing of section 8(d)(1), 10 P.S. § 162.8(d)(1), contemplates that Respondent, an exempt charitable organization under section 6(a)(3)(ii), 10 P.S. § 162.6(a)(3)(ii), should be permitted to utilize professional fundraising counsel without losing the exemption.

Based upon the foregoing, the evidence of record indicates that Respondent is charitable organization that is not exempt from registration under the Act, is soliciting funds from Pennsylvania citizens (both directly and through contracts with professional fundraising counsel and professional solicitors), and has failed to register with the BCCO, in violation of section 5(a) of the Act, 10 P.S. § 162.5(a). The Act authorizes the Secretary to take any one of a number of actions against a charitable organization when the Secretary finds that the charitable organization has violated, or is operating in violation of, any of the Act's provisions. Section 17(a) and (b), 10 P.S. § 162.17(a) and (b).⁹ One of the actions authorized is the issuance of an order directing that

⁹ 10 P.S. § 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.

(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.

(3) Has made a material false statement in an application, statement or report required to be filed under this act.

(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.

(Footnote continued on next page.)

the person cease and desist specified fundraising activities. Section 17(b)(2), 10 P.S. § 162.17(b)(2). The C&D Order issued April 23, 2019, was issued in accordance with that provision, and based on the record adduced at the hearing, its issuance was appropriate. Likewise, in light of the facts of record, the BCCO's letter of June 5, 2019, directing Respondent to register and to refrain from conducting any solicitations in Pennsylvania until it has a valid registration, was appropriately issued. Accordingly, Respondent's appeals of June 19, 2019 and June 28, 2019, must be denied. For that reason, the following Order shall issue:

(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.

* * *

10 P.S. § 162.17(a) and (b).

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

**In the matter of Jackson Township
Volunteer Fire Company
(appeals from the Cease and Desist
Order issued April 23, 2019 and
Denial of Request for Exemption
dated June 5, 2019)
Appellant**

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File No. 19-98-009291

ORDER

AND NOW, this 26th day of November, 2019, upon consideration of the foregoing findings of fact, conclusions of law and discussion, **IT IS ORDERED** that the appeals of Jackson Township Volunteer Fire Company ("Appellant"), made by letters dated June 19, 2019 and June 28, 2019, are **DENIED**.

IT IS FURTHER ORDERED that the **CEASE AND DESIST ORDER** issued on April 23, 2019, **SHALL REMAIN IN EFFECT**. Appellant charitable organization is prohibited from soliciting charitable contributions in this Commonwealth, until such time as Appellant is properly registered with the Department's Bureau of Corporations and Charitable Organizations.

Failure to comply with this Order shall constitute a violation of an order issued by the Secretary, subjecting Jackson Township Volunteer Fire Company to additional penalties under Section 17 of the Act, 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:



**Kathy Boockvar
Secretary of the Commonwealth**

For the Commonwealth:

Michael J. Gennett, Esquire
Pennsylvania Department of State
Office of Chief Counsel
306 North Office Building
Harrisburg, PA 17120

For Appellant:

William Gleason Barbin, Esquire
LAW OFFICES OF GLEASON, BARBIN AND
MARKOVITZ, LLP
206 Main Street
Johnstown, PA 15901-1682

Date of mailing: 11.27.19

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 Corporations and Charitable Organizations
401 North Street
Room 306
Harrisburg, PA 17120