

Outside Fundraising Help: Part III - "Fundraising Counsel"

12.10.15 | Linda J. Rosenthal, JD



It's that time of year again. You're busy with holiday preparations and celebrations and, if you're a key member of a nonprofit's team, you're keeping an eye on the December 31st deadline for prospective donors to support your group and be eligible for a tax deduction.

In addition to the nuts and bolts of planning and coordinating a fundraising campaign, you also have to pay close attention to your state's fundraising rules and regulations. If you're targeting donors in other jurisdictions, you need to learn about the rules there, too.

"California," we explained [in the first of a series of earlier blog posts](#), "like most other states, takes a keen interest in what you're doing – or in what you're not doing, but should be (doing) – especially in the area of fundraising."

"The agency most concerned with your fundraising activities is the California Attorney General's Office. Here's how that agency summarizes its role":

The [Attorney General regulates charities and the professional fundraisers](#) who solicit on their behalf. The purpose of this oversight is to protect charitable assets for their intended use and ensure that the charitable donations contributed by Californians are not misapplied and squandered through fraud or other means.

In "[Taking Fundraising Outside the Organization](#)," we introduced the special rules, beginning at California Government Code section 12599, that apply when you go outside the organization for help with planning and carrying out solicitations, events, and campaigns. There's an important admonition in section 12599.6(b):

A charitable organization must establish and exercise control over its fundraising activities conducted for its benefit, including approval of all written contracts and agreements, and must ensure that fundraising activities are conducted without coercion.

When You Need Outside Help

There are three specific categories of outside help or activities that are subject to strict requirements.

Commercial Fundraisers

First, we discussed the most tightly regulated of the outside consultant groups – commercial fundraisers. “Simply put,” we explained, “a commercial fundraiser is anyone who’s paid to solicit ‘funds, assets, or property’ in California for charitable purposes, and who receives or controls that money or property. It also includes anyone who ‘employs, procures, or engages’ any paid person to solicit or control charitable donations. This definition doesn’t refer to any employee or trustee of a charitable organization. Section 12599(a).”

Commercial Coventurers

Next, we discussed a category that is sometimes referred to as “cause-related marketing.”

“A commercial coventure or cause-related marketing project is ‘an agreement between a business and a nonprofit to raise money for a particular cause.’”

The arrangement benefits both sides: The nonprofit gets a windfall of charitable donations without having to do much other than allowing the for-profit to tell the general public that a percentage of sales will go to the charity; the for-profit benefits from the “halo effect” of association with a worthy cause as well as the usual marketing boost for the firm’s bottom line.

The most common form of this arrangement is simple and direct: “telling the general public that a set portion of the sale proceeds of product or service will be donated to a designated charity.”

Fundraising Counsel

Now, we turn to the third of these categories. “Fundraising counsel” is not – as the term may seem to apply – a reference to your attorneys or accountants.

Here’s the statutory definition in Government Code section 12599.1(a): “...[A]ny individual, corporation, unincorporated association, or other legal entity who is described by all of the following: (1) For compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes; (2) Does not solicit funds, assets, or property for charitable purposes; (3) Does not receive or control funds, assets, or property solicited for charitable purposes in this state; and (4) Does not employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

Just so everyone’s clear about who’s who in this regulatory scheme, subsection (b) lists everyone, including your attorney, who is not “fundraising counsel for charitable purposes.”

A key requirement for any “fundraising counsel for charitable purposes” is to file a specific registration form with the Attorney General’s Registry of Charitable Trusts “prior to managing,

advising, counseling, consulting, or preparing material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes....” The registration must be renewed by January 15 of each year, and there’s a fee, of course.

What’s also required is a report “listing each person, corporation, unincorporated association, or other legal entity for whom the fundraising counsel has performed any services described in paragraph (1) of subdivision (a), and a statement certifying that the fundraising counsel had a written contract with each listed person, corporation, unincorporated association, or other legal entity that complied with the requirements of subdivision (f).”

Also, “not less than 10 working days prior to the commencement of the performance of any service for a charitable organization by a fundraising counsel for charitable purposes, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, the fundraising counsel shall file with the Attorney General’s Registry of Charitable Trusts a notice on a form prescribed by the Attorney General that sets forth...” lots of specific identifying information about that particular campaign.

In this type of arrangement, a “written contract” is required “for each service to be performed,” signed by authorized agents of both the organization and the fundraising counsel, and “available for inspection by the Attorney General.” The statute lists certain mandatory terms, including information about fees.

Conclusion

If your organization doesn’t have a large enough staff or the necessary expertise to plan and execute a successful fundraising campaign, there’s lots of outside help available. But – as we’ve cautioned before – don’t rely on any summary of the applicable, strict rules and requirements – ours or anyone else’s. Carefully read the text of the statute and make sure you and your consultants understand what’s required.

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