

**OPINION  
66-22**

July 20, 1966 (OPINION)

Mr. Albert A. Wolf, State's Attorney

Burleigh County

RE: Charitable Organizations - Solicitation - License

This is in reply to your request for an opinion with regard to the applicability of Chapter 50-22 of the 1965 Supplement to the North Dakota Century Code to certain described activities.

The first example you give relates to a business establishment that according to its advertising (copies of which you submit) has been in the business of selling fireworks for a number of years. The current advertisement states that "10 percent of all our sales go to the Crippled Children's Society" and "Ten percent of all profits will be donated to the Crippled Children's Society."

The second example you give concerns a carnival type business organization that advertises the usual features of such carnival type operation, plus the statement that the show is being sponsored by a local fraternal organization and that same is "for the benefit of Father Cassidy's Home on the Range for Boys."

You request our opinion on:

1. Whether such solicitation as is herein described and as shown by evidentiary materials submitted is subject to the provisions of Chapter 50-22 of the 1965 Supplement to the North Dakota Century Code; and
2. Whether, if the first question is answered in the affirmative whether an action to enjoin such advertising would be appropriate as a substitute or as an addition to the criminal statutory provisions contained in Chapter 50-22.

The basic prohibition of Chapter 50-22 is contained in section 50-22-0 of the North Dakota Century Code, which provides:

"LICENSE TO SOLICIT - TERM - REVOCATION. - No charitable organization shall solicit contributions from persons in this state by any means whatsoever without first having obtained a license from the secretary of state. The secretary of state shall investigate the financial responsibility, experience, character, and general fitness of the applicant, and if such investigation warrants the belief that the solicitations are for a worthy charitable purpose and that the applicant will conduct solicitations in accordance with the law, a license shall be issued to such applicant, giving him the right to solicit within the state for a period of one year. If the secretary of state shall find the applicant is not qualified to be issued a license, he shall deny the application, forthwith

notify the applicant of the denial, but the license fee shall be retained. All fees collected under the provisions of this chapter shall be credited to the general fund of the state. The fee for such license shall be ten dollars and may be renewed from year to year, but shall be subject to revocation by the secretary of state at any time for just cause. This chapter shall not apply to solicitations conducted by or on behalf of any religious corporation."

The term "charitable organization" is defined by subsection 2 of section 50-22-01 of the North Dakota Century Code (1965 Supplement) as meaning:

" \* \* \* any benevolent, philanthropic, patriotic, or eleemosynary organization or one purporting to be such, except Boy and Girl Scouts of America organizations and organizations soliciting funds for institutions of higher learning, and organizations soliciting funds for churches operating and having a place of worship within the state, \* \* \* ."

The term "contribution" is defined by subsection 3 of section 50-22-01 of the 1965 Supplement to the North Dakota Century Code as meaning:

" \* \* \* the promise or grant of any money or property of any kind or value."

We must recognize the practice of many "charitable organizations" in giving the contributor a receipt or symbol showing such contribution. These generally constitute an item of little or no intrinsic or commercial value. Examples of these might be feathers, buttons, pins, stockers, artificial flowers, etc., basically serving, if any purposes, that of identifying the contributor as a contributor. In such operations it is not suggested that the item is of standard commercial value except in relationship to the organization which receives the contribution.

The types of organizations to which your letter refers, however, appear to be basically business organizations selling a service or a product, possibly at least with the implication that the price charged is not greater than standard commercial charge for a similar service or product, and with the added features of the fact that a contribution will be made to a legitimate charitable organization from the proceeds of such sales of services or products. The fact that the "sale" is conducted under the auspices and sponsorship of a fraternal order would not serve to distinguish this from a commercial business venture in circumstances such as are described in the advertising material submitted.

While we further recognize that the two types of business to which you make reference are temporary and transient types of businesses, this feature of their advertising does not appear to be inherently different than that of the average permanently located merchant in displaying an appropriate symbol or sticker in his store window to show that such business has made the appropriate contribution to obtain such sticker or symbol.

From careful examination of the evidentiary materials you submit, it seems doubtful to us that the businesses you described are subject to the provisions of Chapter 50-22 of the Supplement to the North Dakota Century Code. On the basis of this negative answer to your first question, we note that your second question does not call for an answer.

We are not suggesting, however, that a charitable organization can evade the precise terms of the statute by "selling" its receipts or symbols having little or no inherent value except as such receipts or symbols at a price so high as to be concomitant only with a charitable contribution.

Likewise, we are not suggesting that the type of business organizations to which you make reference can lawfully advertise that a part of the profits, or a part of the proceeds of the sales of its goods, wares and services will be turned over to named charities, or that the program is being held for the benefit of a designated charity without actually following through on such promises. Proof of criminal offenses, or obtaining of injunctive relief in such circumstances would probably involve a detailed audit of the organization's books and records. Considering the possibilities that could exist of offsetting what would otherwise be properly considered profit or proceeds of sales by incongruously high business costs, such as for example inordinately high managerial salaries, either a criminal or equitable proceeding in this line could present quite a complicated process.

HELGI JOHANNESON

Attorney General