



## STATE OF WISCONSIN

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### **Positions Statements Related to Charitable Organizations Issued by the Department of Safety and Professional Services**

#### **WHAT IS A CHARITABLE ORGANIZATION?**

[Wis. Stat. §440.41](#) states that any organization described in section 501(c)(3) of the internal revenue code that is exempt from taxation under section 501(a) of the internal revenue code qualifies as a charitable organization. A link to the Internal Revenue Code can be found [here](#).

#### **WHAT IS A CHARITABLE PURPOSE?**

[Wis. Stat. § 440.41\(2\)](#) describes a charitable purpose as either a purpose described in section 501(c)(3) of the internal revenue code, or a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare, advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

#### **WHAT IS A CONTRIBUTION?**

[Wis. Stat. § 440.41\(5\)](#) defines a contribution as a grant or pledge of money, credit, property, or other thing of value, except used clothing or household goods, given to a charitable organization. A contribution does not include income from bingo or raffles, a government grant, or a bona fide fee, due, or assessment paid by a member of a charitable organization, except that if initial membership is conferred solely as consideration for making a pledge or grant in response to a solicitation, the grant or pledge is a contribution.

#### **WHAT DOES IT MEAN TO SOLICIT?**

[Wis. Stat. § 440.41\(8\)](#) defines the act of soliciting as requesting, directly or indirectly, a contribution that will be used for a charitable purpose or will benefit a charitable organization.

#### **WHAT IS A SOLICITATION?**

[Wis. Stat. § 440.41\(9\)](#) defines a solicitation as an act or practice of soliciting, including any of the following: an oral or written request, an announcement to the news media or on the radio, television, telephone, or telegraph, or the distribution or posting of a handbill or other written publication. It also includes any advertisement, book, card, tag, or other tangible item that requests financial support, uses the name of the organization as a reason for making a

purchase, or says that a portion or all of the proceeds from the sale will benefit a charitable organization.

### **WHAT IS “FUND-RAISING COUNSEL”?**

[Wis. Stat. §440.41\(6\)](#) defines fund-raising counsel as a person who, for compensation, plans, manages, advises, consults or prepares material for a charitable organization, but who does not solicit and who does not employ, engage, or provide any person who is paid to solicit contributions. Fund-raising counsel does not include an attorney, investment counselor, or employee of a financial institution who advises a person to make a contribution or a bona fide employee, volunteer, or salaried officer of a charitable organization.

### **WHAT IS A PROFESSIONAL FUND-RAISER?**

[Wis. Stat. §440.41\(7\)](#) defines a professional fund-raiser as a person who, for compensation, solicits in the state or employs, engages or provides, directly or indirectly, another person who is paid to solicit. Professional fund-raiser does not include an attorney, investment counselor, employee of a financial institution who advises a person to make a charitable donation.

### **ARE THERE ANY EXCEPTIONS TO REGISTRATION REQUIREMENTS IN WISCONSIN?**

[Wis. Stat. § 440.42\(5\)](#) states that the following groups are not required to register:

- A person that is exempt from filing a federal annual information return under §6033(a)(2)(A)(i) and (iii) and (C)(i) of the internal revenue code.
- A candidate for national, state, or local office or a political party or other community group required to file financial information with the federal elections commission or a filing officer under state law.
- A charitable organization which does not intend to raise or receive contribution excess of \$5,000 during a fiscal year, if all of its functions, including solicitation, are performed by persons who are unpaid for their services, and if no part of its assets or income inures to the benefit of, or is paid to, any officer or member of the charitable organization. Generally, a charitable organization raises or receives more than \$5,000.
- A fraternal, civic, benevolent, patriotic, or social organization that solicits contributions solely from its membership.
- A veterans organization incorporated under Wisconsin law or chartered under federal law or the service foundation of such an organization recognized in the bylaws of the organization.
- A nonprofit, postsecondary education institution accredited by a regional accrediting agency or association approved under 20 U.S.C. 1099(b) or an educational institution and its authorized charitable foundations which solicit contributions only from its students and their families, alumni, faculty, trustees, corporations, foundations and patients.
- A state agency or local government unit. A private school, as defined in [Wis. Stat. § 118.165](#).

## **WHEN DOES FUND-RAISING COUNSEL NEED TO BE REGISTERED?**

[Wis. Stat. § 440.43\(1\)](#) states that fund-raising counsel may not at any time have custody of contributions from a solicitation for a charitable organization that is required to register, unless the fund-raising counsel is registered.

### **Exceptions under [Wis. Stat. § 440.43\(6\)](#)**

Wis. Stat. § 440.43 does not apply to a fund-raising counsel who does not intend to earn more than \$1,000 per year as a fund-raising counsel, except that a fund-raising counsel who does not intend to earn more than \$1,000 but does earn more than \$1,000 in a year shall, beginning 30 days after actually earning more than \$1,000 in a year if the fund-raising counsel at any time has custody of contributions for a charitable organization that is required to be registered.

## **WHEN DOES A PROFESSIONAL FUND-RAISER NEED TO BE REGISTERED?**

[Wis. Stat. § 440.44\(1\)\(a\)](#) states that no fund-raising counsel may at any time have custody of contributions from a solicitation for a charitable organization unless registered with the Department.

## **ARE THERE OTHER REQUIREMENTS THAT APPLY ONLY TO A PROFESSIONAL FUND-RAISER?**

[Wis. Stat. § 440.455\(1\)](#) states that a professional-fundraiser must provide a written confirmation of any solicitation, prior to accepting the contribution, and make the following disclosures: the name of the charitable organization, that a financial statement will be provided to the person upon request, a clear description of the primary purpose for which the solicitation is made.

[Wis. Stat. § 440.455\(3\)\(a\)](#) states that if a fund-raiser makes an oral solicitation on behalf of a charitable organization, including those made by telephone, the fund-raiser shall send a written confirmation, within 5 days after the solicitation, to each person contributing or pledging to contribute. The written confirmation shall include a clear and conspicuous disclosure of the name of the professional fund-raiser and that the solicitation is being conducted by a professional fund-raiser.

## **ARE THERE ANY RESTRICTIONS ON WHAT A PROFESSIONAL FUND-RAISER CAN SAY?**

[Wis. Stat. § 440.455\(3\)\(b\)](#) states that a fund-raiser may not represent that any part of the contributions received by the fund-raiser will be given or donated to a charitable organization unless that charitable organization, prior to the solicitation, consented in writing, signed by 2 authorized officers, directors or trustees of that other charitable organization, to the use of its name.

[Wis. Stat. §440.455\(3\)\(c\)](#) states that a fund-raiser may not represent that tickets to an event will be donated to an organization for use by others unless all of the following conditions are met: the fund-raiser has a commitment in writing from the organization stating that the organization will accept donated tickets and specifying the number accepted; the fund-raiser solicits contributions for donated tickets from no more contributors than the number of tickets that the organization is willing to accept.

#### **ARE THERE ANY EXCEPTIONS TO THE DISCLOSURE REQUIREMENTS?**

[Wis. Stat. § 440.455\(4\)](#) states that a charitable organization that operates solely within one community and that received less than \$50,000 in contributions during its most recently completed fiscal year may apply for an exemption from the disclosure requirements.

#### **DOES THE EXEMPTION THAT THE DEPARTMENT GIVES TO PRIVATE SCHOOLS EXTEND TO THE FOUNDATIONS THAT SUPPORT THE PRIVATE SCHOOLS?**

[Wis. Stat. § 440.42\(5\)\(a\)\(5\)](#) states that an “authorized charitable foundation” of postsecondary educational institutions are exempt from disclosure requirements, with certain limitations.

#### **MAY A CONSUMER REQUEST AND RECEIVE FROM THE DEPARTMENT RECORDS FILED BY REGISTERED PERSONS OR ENTITIES?**

[Wis. Stat. § 440.47](#) states that generally registration statements, applications, reports, contracts, and agreements of charitable organizations, fund-raising counsel, professional fund-raisers and unpaid solicitors and all other documents and information retained by or filed with the Department for inspection or copying.

#### **WHEN DOES A CHARITABLE ORGANIZATION NEED TO BE REGISTERED IN WISCONSIN?**

[Wis. Stat. § 440.42\(1\)](#) states that if a charitable organization solicits in the state or has contributions solicited in the state on its behalf must register with the Department within thirty days after the date on which its contributions exceed \$5,000.

#### **ARE THERE ANY OTHER PROHIBITED ACTS?**

[Wis. Stat. §440.46\(1\)](#) states that no person may, in the planning, management, or execution of a solicitation or charitable sales promotion, do any of the following:

Use an unfair or deceptive act or practice

Imply that a contribution is for or on behalf of a charitable organization or use any emblem, device or printed matter belonging to or associated with a charitable organization without first being authorized in writing to do so by the charitable organization.

Use a name, symbol or statement so closely related or similar to that used by another charitable organization that the use of the name, symbol or statement that would tend to confuse or mislead a person being solicited.

Represent or lead anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes if that is not the fact.

Lead anyone in any manner to believe that another person sponsors, endorses, or approves a solicitation or a charitable sales promotion if the other person has not sponsored, endorsed, or approved the solicitation or charitable sales promotion in writing.

Use the fact of registration to lead any person to believe that the registration constitutes an endorsement or approval by the state.

### **MAY A LICENSED CHARITY ACCEPT A CONTRIBUTION FROM AN UNLICENSED RAFFLE?**

There is no rule governing the acceptance of a contribution from an unlicensed raffle or other event. A licensed charitable organization may accept the donation, but it must report the contribution as it would any other donation or contribution. The charitable organization should also be aware that accepting the donation may open it up to investigation and enforcement action by the Department.