

1981 WL 158003 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 7, 1981

***1 Re: [Section 33-55-90 of the South Carolina Code of Laws \(1976\)](#)**

The Honorable John C. Land, III
Drawer G
Manning, South Carolina 29102

Dear Senator Land:

Your letter of September 23, 1981, requested an opinion concerning the constitutionality of [Section 33-55-90 of the South Carolina Code of Laws \(1976\)](#), in light of the recent Supreme Court decisions in [Schaumburg v. CBE](#), 63 L.Ed.2d 75 (1980) and [Metromedia, Inc. v. San Diego](#), 69 L.Ed.2d 800 (1981). After reviewing these decisions, I do not feel that [Section 33-55-90](#) has been rendered unconstitutional.

The municipal ordinance struck down in [Schaumburg](#) prohibited the solicitation of contributions by charitable organizations that do not use at least seventy-five (75%) percent of their receipts for charitable purposes, those purposes being defined to exclude solicitation expenses, salaries, overhead and other administrative expenses. [Section 33-55-90 of the South Carolina Code of Laws \(1976\)](#) also seeks to prohibit excessively high fund-raising costs by subjecting contracts or agreements between professional fund-raising council or professional solicitors to the scrutiny of the Secretary of State. This statute, however, has no fixed, mechanical seventy-five (75%) percent rule. If the Secretary concludes that such a contract or written arrangement will involve an excessively high fund-raising cost, he shall request the parties to provide satisfactory explanation and may, if not satisfied, request renegotiation of the arrangement upon terms acceptable to him. If this is not done, the Secretary may disapprove the contract or arrangement. Any party to a disapproved contract may demand a hearing before the Commission on Charitable Organizations. Clearly, the south carolina approach is less intrusive of First Amendment rights and yet provides protection to the public from fraud, crime and undue annoyance.

Moreover, my reading of [Metroredia](#) does not indicate any further restriction on the States than those indicated by the Court in [Schaumburg](#). Therefore, since [Metromedia](#) dealt with a dissimilar factual setting (billboard advertising), I do not feel it affects our statute one way, or the other.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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