

1974 S.C. Op. Atty. Gen. 113 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3746, 1974 WL 21263

Office of the Attorney General

State of South Carolina

Opinion No. 3746

April 4, 1974

***1 RE: Exemption of the Red Cross from the ‘Solicitation of Charitable Funds Act.’**

Mr. Edward J. Gully
Manager
American National Red Cross
2425 Park Road
Post Office Box 3507
Charlotte, North Carolina 28203

Dear Mr. Gully:

Your letter concerning the status of the American National Red Cross with respect to the ‘Solicitation of Charitable Funds Act,’ § 67–91, *et. seq.*, CODE OF LAWS OF SOUTH CAROLINA (1962), has been referred to me for answer. Specifically you request an opinion as to whether the Red Cross is subject to the provisions of the ‘Solicitation of Charitable Funds Act,’ *supra*. It is the opinion of this office that the American Red Cross, as a quasi-federal governmental agency, is not subject to the registration provisions of the Act.

The Act includes the American National Red Cross within those groups required to register pursuant to the Act. The words ‘corporation,’ ‘association,’ and ‘institution’ shall mean any aggregation of individuals, whether two or more, working for a common purpose in their community, local councils of boy and girl organizations, and clubs, hospitals, Community Chest, Red. Cross [Emphasis supplied] and all other charitable enterprises. § 67–92(4) CODE OF LAWS OF SOUTH CAROLINA (1962) (Supplement).

The Red Cross is, however, not a private organization but rather an instrumentality of the United States. The Supreme Court of the United States, in the case of [Department of Employment v. United States](#), 385 U.S. 360, 87 S.Ct. 464, 17 L. Ed. 2d 414, 417–418 (1966), held:

On the merits, we hold that the Red Cross is an instrumentality of the United States for purposes of immunity from state taxation levied on its operations, and that this immunity has not been waived by congressional enactment.

Furthermore, the Red Cross is required to submit to the Secretary of Defense an annual report of its proceedings, which include a ‘full, complete, and itemized report of receipts and expenditures of whatever kind,’ to be audited by the Department of Defense which is required to transmit a copy of the report to Congress. [36 U.S.C. § 6](#).

With the establishment of the fact that the Red Cross is an instrumentality of the United States government, it follows that the State of South Carolina has no authority to regulate the Red Cross's activities.

A corollary to the principle of supremacy of federal law over state law is that the activities of the Federal Government are free from regulation by any state. The United States may perform its functions without conforming to the police regulations of the states . . .

The rule of federal immunity, however, has its limitations and qualifications. Thus, where there is no contrary federal regulation or policy, and Congress has not expressed any intent to exclude state regulation, a state regulation is not invalid merely because it imposes some burdens on the Federal Government. 72 Am Jur 2d, States § 19 at 424 (1974).

*2 The requirement of registering and reporting under the Act is an exercise of the police power of the State. Therefore, the Red Cross, as an instrumentality of the federal government, may perform its functions without the necessity of registering and reporting under the ‘Solicitation of Charitable Funds Act’. Furthermore, the Congress has, by implication, expressed its intention to exclude State regulation of the Red Cross by requiring it to transmit a report to the Secretary of Defense and requiring the Department of Defense to audit the Red Cross. [36 U.S.C.A. § 6](#).

Thus, it is the opinion of this office that the American National Red Cross cannot be required to conform to the requirements of the ‘Solicitation of Charitable Funds Act’.

Yours very truly,

M. Elizabeth Crum
Staff Attorney

1974 S.C. Op. Atty. Gen. 113 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3746, 1974 WL 21263