

1974 WL 27846 (S.C.A.G.)  
Office of the Attorney General  
State of South Carolina  
July 3, 1974

**\*1 Re: Definition of ‘Solicitation’ pursuant to the South Carolina Solicitation of Charitable Funds Act.**

Mr. Ronald H. DeBarry  
Division of Public Charities  
Department of State  
State of South Carolina  
Post Office Box 11350  
Columbia, South Carolina 29211

Dear Mr. DeBarry:

In your letter of June 25, 1974, you ask ‘What Constitutes Solicitation’ and ‘Are organizations who do not solicit contributions exempt from the provisions of the Act?’

As to your first question, § 67-92(1), CODE OF LAWS OF SOUTH CAROLINA (1962, as amended defines ‘charitable organization’ as:

A person which is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, or eleemosynary organization or any person which solicits or obtains contributions solicited from the public for charitable purposes after July 1, 1972. A chapter, branch, area, office or similar affiliate or any person soliciting contributions . . . [Friedmans v. Framer, 139 NYS 2d 331, 337.](#)

Throughout the Act, the Legislature has used the phrase ‘solicits contributions’ or ‘solicits funds.’ Therefore, in determining the meaning of solicit, the terms ‘contributions’ and ‘funds’ must be taken into consideration.

One of the fundamental rules of statutory construction is that when a term is not defined by statute, that term is to be taken in its ordinary, every day meaning. See, Sutherland on Statutory Construction §

[I]n the ordinary sense, the word ‘solicit’ means: to approach for something; to ask for the purpose of receiving; to endeavor to obtain by asking; to importune or implore for the purpose of obtaining; to awake or incite to action by acts or conduct intended to and calculated to incite the giving. The only thing that is necessary is that the means employed for the asking of something, whether by oral or mute conduct, justify the person importuned or implored in treating the request as a serious request that such person be moved to action. [People v. Framer, 139 NYS 2d 331, 337 \(1955\).](#)

In view of the broad meaning attaching to the word ‘solicit,’ any question arising under the Solicitation of Charitable Funds Act must be considered on a case by case basis.

The question as to what constitutes a solicitation has arisen with regard to a civic organization which operates a shall coffee and gift shop in a hospital. The net proceeds from its sales are donated to charity. This civic group maintains, that since it does not ‘solicit’, it should be exempted from the registration requirements of the Act. The simple acts of selling of coffee and gifts for their fair market value cannot, in themselves, be considered soliciting. However, if the civic organization advertises the fact that all of its proceeds are donated to charity, such advertisement may be sufficient to ‘justify the person importuned or implored in treating the request as a serious request that such person be moved to action.’ [Framer, supra 200 F. Supp. 91, 94.](#)

\*2 Another question arises with respect to the civic organization. To be regulated under the Act, the solicitation must be of 'contributions' or 'funds' for a charitable purpose. Do the proceeds from the sale for fair market value of the organizations goods constitute 'contributions' or 'funds' for a 'charitable purpose?' The phrase 'charitable purpose' is defined by the act as '[a]ny charitable, benevolent, philanthropic, patriotic, or eleemosynary purposes.' § 67-92(10), CODE OF LAWS OF SOUTH CAROLINA (1962) (Supp.). This 'charitable purpose' language is similar in nature to that of the Internal Revenue Code. For Internal Revenue purposes, 'the words 'gifts' and 'contributions' contemplate transfer of property without consideration.' [Allis-Challers Manufacturing Co. v. United States](#), 200 F. Supp. 91, 94 (1961). In the case at hand, the civic organization furnish food and gifts for money and the customers, in effect, receive consideration for their money. Such transactions cannot be considered soliciting contributions or funds for charitable purposes, absent a showing that the civic organization in question sells its wares at inflated prices while communicating to its customers that the proceeds from the sale are to be used for charitable purposes.

Your second question is whether or not organizations who do not solicit contributions are exempt from the provisions of the Act. In asking this question it is assumed that you refer to § 67-95(4), CODE OF LAWS OF SOUTH CAROLINA (1962) (Supp.). This question is still being researched and the answer will be forwarded under separate cover.

Yours very truly,

M. Elizabeth Crum  
Assistant Attorney General

1974 WL 27846 (S.C.A.G.)

---

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.