ATTORNEY GENERAL'S GUIDE FOR CHARITIES WHO FUNDRAISE FROM THE PUBLIC

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November 1991
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Many charitable organizations raise funds from the public. As well, many organizations which are otherwise not charities raise funds from the public for charitable causes and are subject to Massachusetts laws governing charitable solicitation. It is important to the public, to charities in general, to the particular fundraising organization, and to the intended beneficiaries of the donated funds that such fundraising occur smoothly, efficiently and honestly.

While some charities have large enough budgets that they employ full time fundraising personnel, others use volunteers to conduct fundraisers. Still other charities and non-profits hire professional solicitors. (For the sake of brevity, in this guide references to charities are intended to include noncharitable organizations, such as unions or fraternal or civic organizations, when they solicit funds for charitable purposes.) Whatever the method of fundraising, a charity must keep in mind at all times that its good name is its most important and valuable asset. In fact, this is so important that under Massachusetts law, a charity’s name may not be used in a fundraising by another without the charity’s permission.

The success of a fundraising campaign or event will be due in large part to the sense of trust that prospective donors place in the charitable organization. They trust that the charitable organization will raise the funds without excessive fundraising expenses, that the organization will use the donated funds for the purposes for which they were solicited, and that the charity will operate efficiently without wasteful administrative costs. Charities must continually work hard to earn this trust, no less during fundraising than at all other times. Unfortunately, without careful attention by the charity its fundraising campaign can fail to measure up to this responsibility. The result can be serious harm to the public and to the charity itself.
This guide is provided to help fundraising charities anticipate potential problem areas and take steps to avoid them. By avoiding problem areas in fundraising, charities can enhance rather than undermine the public’s trust. Charities who do not fundraise carefully will risk bad publicity and damage to their reputation, as well as eventual loss of income and, if law violations occurred, legal action by this office.

This guide discusses the fundraising campaign in four sections: (1) planning a fundraiser; (2) beginning the fundraiser; (3) conducting the fundraiser; and (4) concluding the fundraiser.

1. Planning a Fundraiser

When planning a fundraiser, charities should consider taking the following steps:

* Set your goals for the fundraiser. Be specific about issues such as how much money you wish to raise, the type of fundraiser you wish to hold, the duration of the campaign, and the purpose for which you wish to hold the fundraiser. All people involved in the fundraiser, or in the organization if possible, should participate in setting and clearly understand these goals.

* Be sure that your organization is registered and current in its filings with the Division of Public Charities, Office of the Attorney General, as required by Massachusetts General law. (PLEASE NOTE: organizations which are otherwise not charities but raise funds from the public for charitable causes must register as charitable organizations.) If you have questions about your organization’s filing status or would like a copy of our two general guides ("Questions Commonly Asked" and "Guide to the Registration and Filing Requirements of the Division of Public Charities"), call or write the Division of Public Charities or stop by the office during business hours:

Division of Public Charities
Office of the Attorney General
One Ashburton Place, 21st Floor, Room 2109
Boston, MA 02108
Tel. (617) 727-2200, ext. 2101

Springfield office (413) 784-1240

* Some charities turn to professional solicitors to help them raise money. Charities who use paid solicitors must be very careful in entering into such arrangements, because
they are authorizing an outside entity to represent them to the public. If problems arise in the fundraising, the charity will suffer. If high fundraising costs are involved, potential donors as well as the general public will be very concerned. As well, some solicitors can be overzealous in an attempt to raise funds from the public, leading to misrepresentations made in the charity’s name, for which the charity as well as the solicitor is legally accountable.

* If your organization is considering hiring a professional solicitor, get information from a number of solicitors. Beware of the solicitor who promises something for nothing or "easy money". In order to make sure that the organization is receiving the best possible deal, financial or otherwise, the organization should survey several different fundraising organizations to determine not only which solicitor will give them the best financial deal, but also to see which method of fundraising will best suit their needs. For example, get bids from solicitors, have a frank discussion with solicitors about how much money is expected to be raised during the campaign, ask for a good faith estimate of expenses, demand frequent accountings, and make clear that the charity will control the solicitor, not the other way around.

* The same caveats generally apply when a store or other commercial business advertises that a portion of the purchase price of the business’ products or services will go to your organization (under the law, this arrangement is a commercial co-venture). Find out whether your organization is getting a good deal for the amount of revenues it expects to raise, get frequent accountings, and make sure the charity maintains overall control of the campaign. And again, no one can use your organization’s name in this way without the organization’s written permission.

* Make sure that the professional solicitor or commercial co-venturer you engage to fundraise in Massachusetts is registered and bonded with the Attorney General’s Office, as required by law. These registration records are available for public inspection, and are an excellent source of information for charities, including the amount of revenues raised and fees charged in previous campaigns, if any, and the names of other charities who have dealt with them and may be able to provide references. Contact the Division of Public Charities, Office of the Attorney General, in Boston (617-727-2200) or call the Attorney General’s Office in Springfield (413-784-1240) to find out more information.
If you choose a raffle or Las Vegas night as the method of fundraising, make sure that you clearly understand the law in Massachusetts relating to these types of fundraisers. Some key components of the law are that the sponsoring organization must be a non-profit organization which has been in existence for a minimum of two years. The organization must apply for a permit to the clerk in the city or town in which the raffle or Las Vegas night will be held. Volunteers from the organization, not professional gaming operators, must conduct the Las Vegas night games. (If you would like a copy of our Guide, "Questions and Answers on Nonprofit Gaming Events," contact the Division of Public Charities.)

2. Beginning the Campaign

In beginning the fundraiser, the organization will want to make sure that all parties involved are fully prepared to handle many different responsibilities. The following are especially important.

* All people who will be directly contacting the public as representatives of the charity, whether they are volunteers or professionals, should be thoroughly trained as to how the charity would like to be represented to the public. In the case of telephone solicitations, the charity should prepare or approve a script. They may also want to anticipate potential questions that the public may ask of the callers, and prepare responses for the callers, so that the callers are not left to answer questions through their own means.

* The charity should review and authorize all material that is presented to the public in its name. In the case of a mailing, the charity should approve the actual material to be sent out; in the case of telephone solicitation, the charity should prepare or review the script. When the charity authorizes the material, it should verify that all information being presented to the public is an accurate portrayal of the charity and its program, including representations as to the tax benefits of a donation. The charity must be certain that the public is not being misled in any way.

* If canisters are being used as a method of fundraising, the label should clearly state the name of the charity which will benefit from the proceeds, as well as the address and phone number of the charity. Furthermore, if a professional solicitor, in this case someone who places and maintains the canisters in exchange for a portion of the
proceeds, is handling the canisters, the label must clearly state that a professional solicitor is involved.

* Contracts are perhaps the most important aspect of a fundraising campaign involving a professional fundraiser because they are the legal description of the relationship between the fundraiser and the charity. BE SURE that you understand the terms of the contract before you sign it. It should be reviewed with an attorney if at all possible. Contracts should do all of the following.

Contracts should be extremely clear and understandable. Do not dismiss a paragraph that you do not understand because of "legal jargon."

Contracts should spell out the responsibilities of each party; even the smallest detail should not be left up to later discussion. For example, some fundraisers solicit funds by asking people to purchase tickets to an event, with the representation that in turn the tickets will be donated so that disadvantaged children can go to an event. In this situation, the contract should clearly specify which party, the fundraiser or the charity, will be responsible for getting commitments from individuals or organizations who are willing to accept them, and for distributing the donated tickets.

Contracts should carefully delineate the financial transaction responsibilities of the charity, such as who will be responsible for various expenses, who will be in charge of the incoming funds, will the fundraiser give periodic status reports to the charity, how will both the charity and the fundraiser receive their compensation, and so on.

Contracts should carefully spell out who will, for the future, own the list of donors who give to the charity. If the charity owns the list, will the fundraiser have a right to use the list in future fundraising? If the fundraiser owns the list, will the charity have a right to give a copy to another fundraiser for a future campaign? Donor lists are a very valuable commodity. Does the contract provide for sufficient compensation for the charity? Again, leave nothing to chance.
3. Conducting the Fundraiser

The actual campaign is perhaps the most important period of a fundraiser; this is often the time of greatest exposure to the public a charity will ever have. Even in the case where a professional solicitor is used, the charity’s responsibilities do not end once the contract has been signed. As mentioned earlier, charities are responsible for actions taken on their behalf. Thus, both charities who use professional solicitors and those who do not will want to be sure to do the following during the actual campaign:

* In a case of telephone solicitation, the charity should closely monitor the callers to make sure that they are following the script. Especially when a professional solicitor is making the calls, the charity should know from where the calls are being made, and should pay several visits to monitor the calls make sure that scripts are accurately being followed. Another method for monitoring is to call back at random some people who the solicitor has called, to make sure what was said. Remember that under Massachusetts law, professional solicitors must disclose their status as such to donors.

* When donated tickets to an event are solicited, the charity should closely monitor the solicitation so that no more donated tickets are solicited than the amount of ticket commitments or the seating capacity allow.

* Closely monitor money movement and intake. Ideally the charity will receive the donations and be the one to make all deposits and withdrawals. However, if a professional solicitor is in charge of this aspect of the campaign, the charity should receive regular accountings, perhaps weekly, of all income and expenses. All donor checks should be made out to the charity, not the solicitor, and the charity should not delegate to the solicitor the authority to endorse the checks.

* Charities should carefully track any complaints received from members of the public. If a pattern develops, the charity may want to review the area which is causing confusion or concern to the public. A special note of caution here: there are for-profit businesses which try to sell their products by misleading prospective purchasers into thinking that the proceeds will be used for charitable purposes. Aside from being illegal, these deceptive practices harm legitimate charities and erode the public’s trust in charitable organizations in general. Whenever you or your organization become aware that a non-charity is using a charitable appeal, report it to the Attorney General’s Office.
4. **Concluding the Fundraiser**

The charity’s responsibility to the public does not end once the actual solicitation has concluded. It is the responsibility of the charity to take the following steps once the campaign is completed:

* The charity should conduct a full accounting of all income and expenses. The charity will have to report this information to the Division of Public Charities in their annual financial filing. In addition, for those charities who hired professional solicitors, the professional solicitors are responsible for accounting to the Division of Public Charities on our form 11. Charities are required to sign this document to verify the figures presented by the fundraiser. Thus, charities should be certain that the figures presented by the solicitors are accurate.

* The charity is also responsible for making sure that the proceeds are used for the purposes for which they were raised. Thus, if donors were told that their contributions would be used for scholarships in the local schools, then they must be used for such scholarships, and not for a different charitable purpose.

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Raising money from the public for charitable purposes is a solemn responsibility. The public believes that charitable organizations will do what they claim they will do with the charitable donations. In turn, charitable organizations rely upon that belief to generate donations which fund programs. Unfortunately, this trust is can be broken by problems which arise during fundraising.

Charities who closely monitor campaigns and carefully research professional fundraisers can often avoid these pitfalls. As a result, the charity should experience a fundraising campaign that not only is financially successful but also enhances the organization’s reputation with the public.