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CHARITABLE SOLICITATION OF MONEY—COMBINED WITH SALE OF MERCHANDISE—VALUE TO THE PURCHASER-DONOR AT LEAST EQUAL TO COST OF MERCHANDISE TO VENDOR-DONEE—COST OF MERCHANDISE TO SUCH VENDOR-DONEE SHOULD NOT BE CONSIDERED “EXPENSE OF A FUND SOLICITATION”—SECTION 1716.03 RC.

**SYLLABUS:**

Where a charitable solicitation of money is combined with the sale of merchandise having a value to the purchaser-donor at least equal to the cost of such merchandise to the vendor-donee, the cost of such merchandise to such vendor-donee should not be considered an “expense of a fund solicitation” within the meaning of Section 1716.03, Revised Code.

Columbus, Ohio, May 10, 1956

Hon. C. Watson Hover, Prosecuting Attorney  
Hamilton County, Cincinnati, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Attorneys for The Cincinnati and Hamilton County Council of Girl Scouts have discussed with us Chapter 1716 of the Revised Statutes (sic) of the State of Ohio and have raised question as to whether such Council is required thereby to file a registration form and later on a report in connection with the Council’s annual sale of cookies.

“We are advised that The Cincinnati and Hamilton County Council of Girl Scouts makes no solicitation of gifts, as such, but it, like many other councils in the state, conducts an annual Girl Scout sale from which it realizes a considerable net profit. We are advised that its only expenses, apart from the purchase of cookies which are resold, are extremely nominal and far less than \$500.00. Of course, the purchase price of the cookies themselves is quite large. We are advised that last year the Cincinnati and Hamilton County Council of Girl Scouts purchased and resold some 168,855 boxes of cookies, at a total cost to the Council of \$34,002.45 for the cookies, and on which the Council made a net profit of \$45,199.81.

“The question, which attorneys for the Girl Scout Council have discussed with us, is whether or not the cost of cookies is

'an expense of fund solicitation' under Section 1716.03 (B) (4). They have stated their opinion that the only charitable contribution being made by the purchaser of cookies is, at the most, the excess of the selling price of a box of cookies over the cost price and have stated their own opinion that the legislature did not intend, in a situation such as this, that the cost of the item being resold should be treated as an expense of fund solicitation for purposes of determining whether or not the charity is entitled to exemption from the statutory requirements for filing a registration form and report. However, since the Council desires fully to comply with all laws, they and we should very greatly appreciate it if you would give us your opinion in the matter."

Section 1716.03, Revised Code, part of the Charitable Fund Solicitations Act, provides in material part as follows:

"\* \* \* (B) The following persons shall not be required to register as provided in section 1716.02 of the Revised Code:

\* \* \*

(4) Any person, when *contemplated expenses of a fund solicitation* will not exceed five hundred dollars in any one year, provided that if expenses of such a fund solicitation exceed five hundred dollars, the information required by the provisions of section 1716.02 of the Revised Code shall forthwith be filed.

\* \* \* "

(Emphasis added.)

The word "person" is defined in Section 1716.01 (C), Revised Code, as including an organization, group, association, partnership, corporation, or any combination of them.

It will be noted that the statute specifically exempts from registration with the Attorney General, or county clerk of courts, any "person" when the "contemplated expenses of a fund solicitation" will not exceed five hundred dollars in any one year. The question is whether or not those expenses incurred by a charitable organization for the purchase of materials or products, which materials or products will be sold to members of the public at large at an established price in excess of cost, are "expenses of a fund solicitation" within the meaning of the exemption provision referred to above.

The cookies were purchased by the Cincinnati and Hamilton County Council of Girl Scouts at a total cost of \$34,002.45. Is that cost outlay an "expense" of a fund "solicitation?"

It may be conceded at the outset that the program in question involves, at least in part, a solicitation of funds for a charitable purpose, this for

the reason that virtually every purchaser is fully aware that the sale is designed to raise money for such a purpose; and we may readily suppose that most purchases are motivated by a desire to contribute thereto. The more fundamental question is what is the amount of the "contribution," for it will be noted, from the provisions of Section 1716.02, Revised Code, that only those persons who solicit *contributions* for a charitable purpose are subject to the act.

In Section 1716.01, Revised Code, the term "contribution" is defined as follows:

"(B) 'Contribution' means the promise or grant of any money or property of any kind or value;"

This definition makes it quite clear that the legislature had in mind "gifts" or "donations" of money or property. In the instant case, however, not all of the sale price is a gift or donation to charity, for the purchaser clearly receives a thing of value, even though concededly of less value than the purchase price in money. Hence it would seem that the only gift or donation, or "contribution" within the meaning of the statute, is the difference between the value of the thing sold and the amount of the purchase price.

Incidentally, I am informed that the sale price of the cookie package is definitely fixed, and that the scouts are under instructions never to accept more or less than that amount. This plan is to be distinguished, therefore, from those schemes whereby a thing of value is given to each donor with the donor being invited to "pay," or give, as much or as little as he chooses.

Finally, it seems unlikely that it was the legislative intent, in requiring a report of the "expenses" of a charitable solicitation, to extend that term to include outlays of the sort here in question. Rather, considering the overall purpose of the legislation, it seems reasonable to suppose that it was desired to give publicity to those programs in which a substantial portion of the gifts received are expended in personal compensation to the managers and solicitors concerned. No such personal compensation is here involved, of course.

For these reasons I am impelled to the view that to the extent that value is received by the purchaser of the goods here in question the transaction in question cannot be regarded as a contribution; and

such goods must be presumed to have a value at least equal to the cost to the Council. It thus follows that only the difference between such cost and the selling price can be regarded as a "contribution"; and the "expense" represented by the cost of the merchandise in question must be attributed to the sale rather than to such contribution. Accordingly, in view of the exemption provision in division (B), subparagraph (4) of Section 1716.03, Revised Code, and your statement that with the item in question excluded, the solicitation expense will be "far less than \$500.00," it would follow that registration is not required in the circumstances described.

In specific answer to your inquiry, therefore, it is my opinion that where a charitable solicitation of money is combined with the sale of merchandise having a value to the purchaser-donor at least equal to the cost of such merchandise to the vendor-donee, the cost of such merchandise to such vendor-donee should not be considered an "expense of a fund solicitation" within the meaning of Section 1716.03, Revised Code.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General