

# Understanding PA Charitable Solicitation Statute

Presented By Carl Emerson at PA Legislative Meeting  
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Carl Emerson

Tom Savage, VP of The Pennsylvania Legislative Federation introduced Carl Emerson to attendees at a meeting of the PA Legislative Federation on Saturday, March 10, 2012. Carl's topic was State Charitable Solicitation Statutes, everything you wanted to know about them but were afraid to ask. He serves currently as counsel in the business department of Montgomery McCracken. He provides legal counsel and advice to nonprofit organizations, including advising charitable organizations and their fundraisers on compliance with State Charitable Solicitation Statutes, conducting charitable organization compliance assessments and conducting internal investigations for charitable and other tax-exempt organizations.

Prior to joining Montgomery McCracken, Carl served as the Director for the Pennsylvania Bureau of Charitable Organizations where he was responsible for administering and enforcing the Pennsylvania Charitable Solicitation law. He's worked closely with Pennsylvania Fire and Emergency Services Institute when I was the executive director, helping us to understand that law and our obligation under it. He's familiar with firefighting operations. Having run the department, you have an individual that knows it from the inside and now from the outside. I think you'll find this to be very informative.

He was named by the Nonprofit Times as one of 50 most influential members of the nonprofit community in 2001, three and six; one of the three recipients of the Association of Fund Raising Professionals Greater Philadelphia Chapter Governor Film Profit Partner Award; received the JD degree from Temple University of Law in 1981; graduate of New Hampshire University in 1978, and he's earned school degrees, magna cum laude, in economics and business administration. I think you'll find that he's well-versed in not only charitable solicitation but business functions and nonprofit operations. Carl, it's all yours.

Thank you. I want to start out by asking the million-dollar question for you guys, your volunteer firefighters. The question is, how many of your volunteer fire companies, your organizations are actually registered with the Pennsylvania Bureau of Charitable Organizations? Great. How many of your organizations solicit contributions from the public? I would imagine that all of you do, right?

Pennsylvania is one of 39 states and the District of Columbia that have actually what are known as charitable solicitation registration statutes. And essentially what they say is, in order for you to legally solicit contributions in the State of Pennsylvania, you have to first be registered with the Pennsylvania Bureau of Charitable Organizations, unless you are one of the types of organizations that the legislature specifically excluded or exempted in the statute, and there's a lot of exemptions and a lot of exclusions.

One of them, the good news for you all is, volunteer fire companies are exempt from the annual registration requirement. The general rule is, in Pennsylvania and 39 states and the District of Columbia, before you can legally solicit contributions from anyone, corporations, individuals, whatever, you have to first be registered. In Pennsylvania, volunteer fire companies are specifically exempt under Section 6(a) That's the good news.

But the bad news is, a lot of the exemptions there's a qualification attached to it, and you're not eligible for the exemption unless you meet the qualification. In Pennsylvania, that qualification is that, all of your fundraising has to be conducted by volunteers or members who are not compensated directly or indirectly for their fundraising activities. So the bottom line is, if you pay anybody anything to do your fundraising, you're not exempt; therefore, you have to register with the Bureau of Charitable Organizations in Pennsylvania.

A lot of times people think that just means as long as I don't pay somebody outside, like a professional. There's a lot of professional fundraising companies out there that actually specialize in representing volunteer fire companies. Yes, if you hire one of those companies; whether it's Municipal Marketing

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-- I can't think of all of them. Choice Marketing is one of them. If you hire them, I'm sure they'll give you great service and your donations will go up. Only down side is that, you now have a legal obligation to register with the Bureau of Charitable Organizations.

The other thing to keep in mind, it's not just you hire someone like Municipal Marketing or Choice Marketing; you say to the president's wife, we'll pay you three bucks an hour to send out these funding letters, or do this or do that, you're compensating somebody directly or indirectly and, technically, you're supposed to be registered. Even if you say we won't pay her money, but maybe weekly bingo games, you can come and play bingo for free or get free food at the concession stand or something for doing the fundraising, technically, you're supposed to be registered with the bureau.

You just want to make sure that the only reason that you are exempt in Pennsylvania is if all of your fundraising is done by volunteers or members who are not compensated directly or indirectly for fundraising. As soon as you pay somebody anything; even if it's a de minimis amount, 10 cents an hour, you're supposed to be registered. You're not eligible for the exemption.

I'll go quickly through 10 basic things you need to know about soliciting. I want you to feel free to ask any questions you have about this topic. **First thing**, you need to determine whether your organization needs to register under the charitable solicitation statute of your home state, if any. Pennsylvania has a statute, and these statutes typically require that you register prior to soliciting, and significant fines and penalties can be imposed.

In Pennsylvania, under Section 17(b)(3) the bureau can impose fines up to a thousand dollars per violation. In theory, they could fine you a thousand dollars for every solicitation that you sent out. It doesn't matter if people didn't even give you any money. And, they can assess additional penalties of up to a hundred dollars a day for every day that you were not in compliance.

When I was the charities director I used to say, if we impose even a fraction of the fines and penalties that we could have imposed against organizations that were caught violating the law, or even those that came in voluntarily, we would literally put them out of business.

The good news is that the bureau doesn't do that. Their goal is to try to get folks into compliance, and they will typically work with you. If you have been soliciting in violation of the law, you may have to pay some kind of a penalty. Even under the current process you may have to sign a consent agreement. Bottom line is, in Pennsylvania, if you're paying anybody directly or indirectly to do fundraising, unfortunately, you do have to register.

**The second thing** is, once you do figure out if you have to register in your own state -- And most of you may not have to worry about this. If you're located on the borders of Pennsylvania, near the New Jersey border or the New York border or the Maryland border or the West Virginia border, you might occasionally solicit people in states other than Pennsylvania. So you first have to figure out if you need to be registered in the state in which you're located. But then you also have to make sure your organization is in compliance with these statutes in all states where it solicits contributions. So, if you're soliciting people in New York or people in New Jersey, technically, you're supposed to be registered there unless you're specifically exempt or excluded under their statute.

Bottom line on this, and I used to say the same thing when I was the charities director and I'm saying the same thing right now, you don't want to wait for the state to catch you. As I was talking to Tom, he let me know that the new charities director was showing up at your meeting this morning. You don't have to be a rocket scientist to figure out that, maybe they might be starting to think about taking an initiative in this area, and maybe it might be true that you say, this has been on the books for like 15, 20 years. We've never been registered. We've never had a problem. No one has followed up with us. Well, that may be changing because, I can tell you, when I was charities director, I probably have given like 4,500 speeches on this topic. And now I'm in private practice, I never showed up unannounced at a meeting on some of the people that I would regulate. You may want to think about getting registered.

A MEMBER: Define solicitation? Is it fundraising as far as bingo, raffles?

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MR. EMERSON: That's a great question. Solicitation, I don't have the legal definition memorized, but it's basically, any time you ask people for money stating that it will benefit your organization. What you typically think about is, please give us 50 bucks to help us support our operations or a hundred bucks. That's clearly soliciting a contribution.

If you say, please buy this raffle ticket because the proceeds will benefit our volunteer fire company, or purchase a sub at our annual sub sale, or come to our circus or come to our concert or to this dinner because it's a fundraising event, that is a solicitation.

A MEMBER: My question is, the avenue of having a professional fundraising counsel listed in that law is causing the trigger mechanic, and that's how this is all coming out, along with the cease and desist orders that the office does issue which stops -- Apparently you can't function. The cease and desist order just stops in place.

MR. EMERSON: Well, in theory, yeah.

A MEMBER: Over the course of 15 years, the office in Harrisburg has literally shut down the fire service. They may not be able possibly to run calls because they can't raise any money at all. That's why I was trying to relate to his question. Back in the '90's, for those of you who don't know, the legislators added professional fundraising counsel to that law along with solicitors. The problem back then is, they had no idea, no clue whatsoever until in '07 we had a meeting with some senators and legislators in Harrisburg, They did not understand that companies mentioned only print and mail for fire companies. They don't see their money. They thought we collected your money. They thought we got your checks; that the revenue comes to us. We don't. The fire company and emergency service get that check. Hence the Fire Company is the solicitor, they collect the money.

MR. EMERSON: No. That's a great question. We fast forward to the thing I was going to say at the end. Both in my former capacity as bureau director and in my capacity now, I empathize with people like Municipal Marketing and Choice Marketing because when the bureau writes the letter to one of the volunteer fire companies and says you have to register because you're using Municipal, a lot of them say fine. I'm not going to use Municipal anymore and that's not -- because you guys provide a great service.

The irony of this whole thing is, the registration process, except for groups like you say that don't have their (c)(3) status. If you have your (c)(3) status and you file a 990 with the IRS, it is such a simple process. If the volunteer fire company would just agree -- You either pay in Pennsylvania \$15 a year, a hundred, \$150 or \$250. You don't pay \$250 unless you have over a half million in contributions. So, for a hundred or \$150 a year, you get the bureau off your back. This gentleman can continue to provide great services for you. He doesn't get the bureau crawling all over him and his company because he's contracting with unregistered volunteer fire companies.

A MEMBER: I hate to ask a question, but you created a conflict that I got from the IRS. The IRS has sent us a letter that states that a 501(c)(4) can accept money and it is taxable deductible.

MR. EMERSON: Correct, you can. Then you should register with the Bureau.

A MEMBER: I mean, you were focusing on (3)(c)s.

MR. EMERSON: You are right that the general rule is that, you have to have tax exempt status under 501(c)(3) of IRS to be able to solicit under tax deductible contributions, unless you're a church, a mosque, a synagogue. They don't have to formally apply. The other exception to that is if you are a (c)(4) and you are a volunteer fire company, you can do that. That's a great point to bring that up.

The second point is, you want to make sure you're in compliance with all the other states. If you're soliciting in Maryland, New Jersey, or a contiguous state, or even California; you have a donor that used to support you in Pennsylvania and he and she retired to Florida, and you continue to solicit them, you're supposed to be registered down there.

The last point about don't wait for them to catch you, when I was the Charities Director, if you were coming in voluntarily, even if you had been violating the law for 10 or 15 years, you always got a pass.

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You got a much better deal. I now probably filed over 16,000 national registrations in all the different states for my clients. I have mainly big national charities that I do this for.

The main way that I can get them out of fines and penalties is when I can say to the regulator honestly, you are absolutely right. You could hammer these people a \$20,000-dollar fine. In fact, you could have fined them \$250,000. I'm very grateful you're only asking for \$20,000. But, we wouldn't be having this conversation if I hadn't convinced them to do the right thing. They've come in voluntarily. You didn't catch them, so cut them a break, and that usually works. Bottom line is, you want to try to register voluntarily.

Assuming that you're doing this and you've registered in the home state and you're registered in other states where you're supposed to be registered, the other thing you want to do is make sure your 990 return and your other registration materials that you file with the IRS and these various state offices are accurate and complete and free of material falsifications and misrepresentations and omissions. In other words, it's not enough to just submit the paperwork. You have to make sure the paperwork is accurate and complete. It cannot be filled with material false statements. That's such a common problem.

I don't think most material false statements are made intentionally, but I'll use one example. I had a client since I'm in private practice, where, my former bureau was going after them for, among other things, the board was a small organization and it had Carl Emerson, Susie Emerson and Mary Emerson and Marty Emerson on the board. Then on the 990 it says after that, are any board members related to each other? The answer was no. It's certainly possible that four people with the same last name on a board is not related to each other. It is possible, but it's not likely. When I said that to the client, I said, why is the answer no there? He said, I just sign the 990 that the accountant put in front of me. I said, you shouldn't be doing that. You should read it. Then I said to the CPA, why did you check off no? Can't you assume that four people with the same last name are related? He said, that's the way the previous accountant did it.

I mean, you're responsible. You're the one signing that return under the penalty of perjury. I have a client that has \$700,000 a year, billions of dollars a year in revenue, and bottom line is that they're paying a big accounting firm, in many cases hundreds of thousands of dollars to prepare their 990's and the audits that are this thick. If there's a problem with that, it's not a defense. You can't go after the accounting firm. The person signing that form is the one they'll go after.

A MEMBER: Does this apply to township donations and township taxes?

MR. EMERSON: No. In Pennsylvania, government grants or contributions are not considered to be contributions. Say, you don't pay anybody to do fundraising and you get \$18,000 in contributions and a 2-million-dollar grant from the state or from your municipality, you still don't have to register with the bureau.

A MEMBER: How comes my organization had to put down \$5,000 in my Borough then? The general allotment, why --

MR. EMERSON: You have to report it, but it doesn't trigger registration.

A MEMBER: We don't use the professional fundraising counsel. I'm the executive director of a nonprofit EMS service, but my borough gives me \$5,000 a year. There was a glitch in my board treasurer's application just recently, six months ago, and we had listed a \$5,000-dollar donation from our counsel. It didn't fall on this line, but that had to be reported because that was a donation.

MR. EMERSON: You have to report it, but you report it as a government grant; not a contribution. The reason it's important, particularly in Pennsylvania and a lot of the states that do that is that I've been aware of, a lot of organizations that have lumped their government contributions in with the contribution level, and they're paying a higher registration fee than they otherwise would have, because that's what determines what your registration fee is, is what you report.

If you say you got \$450,000 in contributions and you really only got \$25,000, and you had a \$425,000-dollar grant, you'll be paying a lot more in a registration fee. You may have to pay for an audit when you didn't have to.

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A MEMBER: How about the fire company that raises \$50,000 in bingo, but they actually bank after they pay their bills \$29,000?

MR. EMERSON: I hear you, but it's based on gross. It would be the same thing if they grossed \$50,000 and netted a thousand. I hear that all the time from the Lion's Club. They're a great organization. Yeah, we sold \$200,000 worth of stuff, but we only made \$20,000. Sorry. You have to pay the higher registration fee.

A MEMBER: That was my question.

MR. EMERSON: Unfortunately, it is gross. The other point is, it's gross national contribution. So, that comes up not so much with you guys. Say you had to register in Florida and you got 10 bucks from someone in Florida, and that's why you had to register there, you're going to pay Florida's registration fee based on your gross national contribution.

A MEMBER: How about rent?

MR. EMERSON: No. Oh, you mean rent as income? No, that doesn't go into your mix in terms of whether -- It doesn't affect your registration fee.

A MEMBER: Then it goes all to the fire company?

MR. EMERSON: Yeah, but that's income. That doesn't affect your level -- what the registration fee you would pay or whether you have to have --

A MEMBER: You wouldn't have to claim that?

MR. EMERSON: You have to report all of this income.

A MEMBER: You have to report it to the IRS.

MR. EMERSON: Sure. So you want to make sure this stuff is filled out accurately and completely. Again, you're signing it under penalty of perjury. I can tell you, the lady who is the bureau's prosecutor right now, she's doing her job. She will go after you if she catches it and feels it's a material false statement.

Once you do get registered in every state you're supposed to be, and you make sure all your information is accurate and complete, you want to make sure you maintain your registration. This is not a once-and-done type of thing. You have to renew your registration every year and get extensions, if your 990 is typically not going to be done by the time you have to file your thing, so you want to make sure you renew your registration. If you don't renew it in time in Pennsylvania you pay a 25-dollar late fee, which is not a big deal. But, if you go too long, they may come after you in fines and penalties and make you pay a percentage rate.

The fifth one is the one this gentleman referred to here. Bureau is starting to do a lot of cross checking on this. You've got to make sure that all your organizations, professional fundraisers, both the solicitors and the fundraising counsels are properly registered and they have filed their contracts with the state.

Now that I'm doing private practice, I do not represent any solicitors. I give them to my competitors, because it's just too complicated. I don't even like representing professional fundraising counsel because I'm in the same dilemma that this gentleman is in all the time. The law of all these states say, if you're soliciting contributions, you, the charity, have to be registered unless you're exempt or excluded, and any for-profit professional solicitors or fundraising counsel you hired to do your work have to be registered, and they have to file your contract with the bureau there and has to be filed 10-working days before you can provide service. It's a royal pain. It really truly is.

I have several fundraising counsel clients where I have to constantly do the same thing this gentleman is doing. I'm going back and forth with their client saying, you've got to get registered. You're not registered in all these different states where my client is providing you services and you've got to get registered. You know what, most of them don't want to do it.

A MEMBER: If we have an event in the town park and we charge \$10 for people to put tables up to sell old fire extinguishers and helmets, and charge guys \$25 for every antique apparatus they sit in the park for the day, is that a contribution or --

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MR. EMERSON: Well, it depends. It would depend on whether you represent to them that a portion of the proceeds is going to benefit your organization.

A MEMBER: Well, obviously.

MR. EMERSON: Well, yeah. But if you don't represent that, then you probably are safe.

A MEMBER: In other words, if you're selling, in a sense, a service that's not considered --

MR. EMERSON: That would be considered to be a program service. Bottom line is that you want to make sure -- The good news for you is that, the companies like Municipal and Choice, they tend to be diligent in making sure that they're registered.

And, just like with my clients that are professional fundraising counsels, their clients can very often get ticked off at my client. I represent the fundraising counsel, and I make sure we file all their contracts with all their charities with the states. What more and more states are doing is, they're then taking those contracts and writing to the charity and saying, Municipal Marketing says they have a contract with you. You're not registered with us. You better get registered with us or we're going to come after you.

A MEMBER: Right there's the trigger.

MR. EMERSON: That's the trigger. When I was the charities director -- I've had this conversation with Brian, a very nice guy and a very dedicated public servant. I would say, when I have a client, Brian, come on. You know when I was charities director, fundraising counsel is such a sticky wicket. I used to cut people a lot of slack. Can't you cut them a break? He'd say, Carl, you're not the bureau director any more.

A MEMBER: Back then you did try to work with the every emergency service.

MR. EMERSON: And especially now that I know, what a hassle it is. My one client had initially not been registered anywhere, and they had over a hundred clients. I had to register them nationally.

The paperwork that had to get filed and all the fines and penalties that I had to try to get them out of. Then when I finally got them registered, it's not like you can just submit all your contracts once a year. Here's our contracts that we have since the last time. You're supposed to be filing these things at least 10 days before. I said to this client, I don't have the time to do this. You have to bring somebody on board.

You cannot, when you get a new client, all of a sudden get all their contracts filed with 26 or 27 states, you have to do that. I have better things to do. He had to bring somebody on to do that.

Bottom line is, you have to be registered unless you're exempt or excluded, and your professionals have to be registered, and they have to file their contracts, and those contracts have to contain certain statutory required provisions. I know Municipal do it. They have the standard contract. They know how to do it the right way.

A MEMBER: When we do our own solicitation, we use a facility within our district that folds, stuffs and puts the labels on and send them out.

MR. EMERSON: Is that all they do?

A MEMBER: That is all they do. They're a mentally-challenged facility that does that for us. We get a printing company to do our printing. We give it to them. They fold; they stuff; they put the label on. We come back and get and take it to the post office. Is there an issue with that?

MR. EMERSON: That you probably will be all right. Every time when I was charities director and even now, all they do is do our printing for us or folding envelopes. Great, send me the contract. I will tell you, to date, I have never ever had somebody submit a contract where that's all they did. They usually do follow-up letters. They keep track of who responded first. They help you figure out what kind of paper to print it on. If that's all they do, you might be safe if all they're doing is printing. They haven't been retained to help plan, manage or advise you. That would be a first in all the years I've been doing this.

A MEMBER: Along his lines. If I have the secretary type up a donation letter; take it down to Kinkos, Staples, whoever, just have them duplicate that and give that back to us, we do the stuffing, the labeling, everything like that, is that considered to --

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MR. EMERSON: I cannot imagine, dealing with the new prosecutor, they would go after something like that.

The other thing you have to keep in mind is that, there's the law, and there's the interpretation of the law. As different people come into positions, they take different interpretation. Look, unfortunately, we didn't write this law. I guess that's another thing I would say to you. I'm sure after you guys read the stuff I have, you'll be really ticked off, but don't get ticked off at the bureau. It's the law. Their job is to enforce it. It's the legislature that wrote the law. If you don't like the law, go to them and get them to change it.

A MEMBER: Who appoints these people?

MR. EMERSON: You mean the head of the bureau?

A MEMBER: Yeah.

MR. EMERSON: That gets appointed by the Governor, but everybody else below him is --

A MEMBER: Who hires them? Who's in charge of it?

MR. EMERSON: You're appointed by the Governor. I was appointed by the Governor. When you're a bureau -- You're not high up.

Anyway, you want to make sure all your professionals are registered and their contracts are filed. Once you're registered, Pennsylvania is one of about 13 states that, when you solicit you have to have the official disclosure statement on every solicitation or receipt or reminder of a contribution.

Essentially what that says is, the official registration and financial information for the XYZ Volunteer Fire Company can be obtained by calling the bureau No. (800) 732-0999. Registration does not imply endorsement. You are technically supposed to have that on every solicitation or receipt or reminder of a contribution if you're registered with the bureau.

A lot of times people balk at that, particularly the big national charities. I don't know if you ever got solicitations from a big charity. You probably don't do it because their solicitations probably don't go out to multiple states. Charities that solicit nationally, you only have Pennsylvania's disclosure statement on solicitations being sent to Pennsylvania residents; Florida on the ones going to Florida residents. A lot of big charities do this to save money. They just put it all under one big buck.

They actually find that--they've done studies--they get a better rate of return because the average citizen thinks, these people must be legitimate. Look at all these states they're registered in. Surely, the state would check them out. They surely wouldn't allow a crooked charity to solicit them. I wish that were true. Some of the biggest crooks out there always make sure they're registered everywhere. They always include that disclosure statement because they want people to think they're legit.

I don't know if you guys deal with this. I represent a lot of commercial co-ventures. In Pennsylvania you don't have to worry about it. Commercial co-ventures is like when a for-profit company is normally not in the business of doing fundraising. Like McDonald's says, for the month March, for every Big Mac you buy we're going to donate 50 cents to the American Heart Association. If you're eating Big Macs, you'll eventually need American Heart Association. Basically, it's a for-profit company. So, in that case, McDonald's has to be registered in four different states as a commercial co-venture.

But the charity, especially if they agree to participate in a national charitable sales promotion -- say, one of you guys had the good fortunate that you only solicit in Pennsylvania, and you're buddies with the president of McDonald's. He says, you know what, I'm going to do a commercial co-venture for you. We're going to say, for every Big Mac that's bought in the month of March, nationwide, you'll get 50 cents. That's great news. The bad news is that you, that little volunteer fire company somewhere in Pennsylvania, you have to register in 39 states and District of Columbia. It would still be worthwhile because you'd make a lot of money.

A MEMBER: Question on that. A lot of local restaurants do community nights. Hoss's locally, where we pass out cards, people come in hand them in, where does that fall under that?

MR. EMERSON: It technically does. But you have to understand something. The bureaus, the states have very limited resources. They're probably not going to go after something like that. That's

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not where the prosecutor gonna want to -- They're not going to get a pay raise by going after some volunteer fire company that did a fundraiser with the local Hoss's. It's just not there. Probably, technically required, but I wouldn't be overly concerned about it.

Even if you're registered in your home state and registered in every state you're supposed to be registered, and your materials that you're filing with the state are truthful and accurate and free of material falsification, and all your fundraising counsels and solicitors are registered and they filed all their contracts and everything, and everything else is all fine, here's another big area where you can get nailed.

Personally, when I was bureau director, this is where the citizens should want the government to be focusing their efforts. You want to make sure the organization solicitation materials are truthful, free of material false statements, misrepresentations and/or omissions. There's a whole slew of things in these statutes that's prohibitive conduct. Bottom line is, you can't lie to people. If you say, come to this fundraiser and we're going to use the funds to do X, Y, Z, you better use the funds for X, Y, Z. You have to honor your representations that you make to donors.

I'll give you one simple example in a nonfirefighter situation. Make-A-Wish Foundation, they're like the top wish-granting group in the company. When I was the bureau director, there was a company, a similar charity, that hired a paid professional solicitor and calling up people in Pennsylvania and they would say, are you familiar with the Make-A-Wish Foundation of America? The person would say, isn't that group that grants children with serious illnesses their last wish? They'd say yes. They'd say, would you like to help grant the wish of a terminally-ill child and the person would say yeah.

They think they're talking to somebody from Make A Wish. A week later they get the confirmation card and it'd be from some other group there. We'd look into that. That company's initial response to the state was, we didn't lie. We didn't say we were from Make-A-Wish. We said, are you familiar with the Make-A-Wish Foundation of America? They initially were fighting us, but they eventually rolled over. They paid a big fine and penalty.

You have to make sure you're doing what you're supposed to be doing. Mostly, you're all volunteer fire companies. Obviously, you remember September 11th, the big thing the Red Cross did. They went out and solicited money. The head of the Red Cross lost a great job. She was making like gazillions of dollars as the head of Red Cross.

Where she got into hot water, they set up this special fund for the victims of the September 11th tragedy, and they were overwhelmed with the response. They got so much money in that they could easily meet all the needs, present and future, of all the victims there. So they said, we're going to use some of that money -- If I were in her position, I would feel the same way.

Back then when they made this decision, the response was so overwhelming, and we were thinking like, where's the next one they're going to hit. Is it going to happen next week, next month. They said, we've got so much here, let's hold some of it in reserve for potential future disasters. They didn't do that. New York Attorney General's Office was going to sue them.

The result is, they ended up -- they hit the gold mine. Don't get me wrong if you lost your husband or father there, but they were forced to live up to the representations they made to the public. I don't know why the Red Cross did that. Normally, they'll say, give us money to help the victims of Hurricane Katrina and other victims of other things, and then they would have been all set up. But you have to live up with the representation that you're making to donors.

**Point number 9.** Here's a good one for volunteer fire companies. Even assuming that you do not have to register with the bureau, after hearing me it's like, you don't want anything to do with this. We're not paying anybody directly or indirectly for fundraising. We're going to make sure that it is all done by volunteers so the bureau can never come after us.

You've got to realize, in Pennsylvania and in most of the statutes, the only thing that you are exempt from is the annual registration requirement, if you meet the criteria. That's the only thing

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you're exempt. If the bureau gets an allegation, or if they just decide they want to come in and look at your books, they can do that. If they get an allegation, which very often will happen, that the treasurer is using some of the volunteer fire company's money to pay for a place for his mistress or -- You guys laugh, but you should be careful.

There was one years ago, the Plymouth Meeting whatever annual association. Those guys were living the life of Reilly. They were buying Land Rovers; they were buying furniture for their houses; Rolex watches with funds. That's a no-no, ladies and gentlemen. You can't ask the public to give you money to help volunteer fire service, and then go buy yourselves Rolex watches and take your buddies to the strip clubs or buy furniture for your house. These guys were so audacious that they claimed sales tax exemption on the purchases for their personal use.

The reason I say this is that, not only volunteer fire companies, but small little groups like animal rescue leagues; particularly volunteer organizations, they notoriously have crappy records. You've got to realize there's nothing that you can do from stopping someone from filing, even a totally unfounded allegation against your organization or you as an individual. If the Bureau, whether it's the Bureau or the Attorney General's Office, or State Police come knocking on your door, you want to be able to show them, that's a bunch of baloney. Here's our records. This shows exactly what we brought in and how we spent it, and I have complete confidence when you look at this, you'll see there's absolutely nothing wrong. And that's the best kind of case.

Contrary to what people think, the state regulators are not out there looking to nail you. I can tell you with the hundreds and hundreds of cases we had, I loved closing cases where we could honestly say, yes, this person made all these horrific allegations about this organization. We went in and looked at their records, and we concluded that this person just had an axe to grind. It was totally unfounded and we close it. That's great. But so many times the records were in such disarray that you couldn't prove it one way or the other. You want to make sure you still have an obligation under the law to keep true and accurate records.

I'm going to close with this. I don't know that this necessarily applies to you guys, but you need to be aware of it because the IRS and state Attorney General in Pennsylvania is looking at this kind of stuff. When you run a charity; when you have tax-exempt status, you don't have to be a volunteer. You don't have to get paid minimum wage for doing your services. You can make a very nice salary running establishments of nonprofits. I represent some of the largest charities in the country, and I would love to make what the heads of these places make or even some of their vice presidents. You can make a very nice salary, but it can't be -- It has to be reasonable compensation. It can't be excessive compensation. There's a whole series of law you have to look at.

You can't pay your people more than what people are running similar, comparable organizations are being paid. If you're going to pay the head of your volunteer company, you want to make sure the countless sources of information where you can see what the typical volunteer fire company pay somebody who runs a volunteer fire company with \$1.5 million of revenue.

**Then the last thing**, only because it is the most common thing that the IRS will nail you on, or they nail charities when they go in and do audits -- It still boggles my mind. They did a study a couple years ago. Over 55,000 charities were withholding the taxes like they were supposed to, but then they weren't forwarding it onto the IRS. That's a no-no. The IRS gets really ticked off. I'm just mentioning that because I was shock. That's the most common thing the IRS finds.

The bottom line on this is, both when I was the Bureau director and now, I don't understand why guys like this gentleman have to be put in the hot seat when it's so simple for their clients to register. I wish the volunteer fire companies would get out there and get registered. I do that now for a living. I've been doing that for almost five years now. The process is not that complicated.

A MEMBER: Because of registration, Carl, there's a company spending over \$14,000 a year because they need to get that audit. Unfortunately, the audit has to be an approved state vendor, which now

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makes things more expensive. I'm sure if the state said, corporate said we're going to pay all the audits like we do firemen's relief. We send auditors out, it probably wouldn't be a problem. But you have a lot of fire companies are saying, we couldn't afford that. My own organization, \$4,000 we spent last year on an audit. That a big chunk of change out of our pocket. It's not just what my full-time job is. I'm also a very active volunteer. We're poor, we're struggling. But we're registered. If we write those dollar amounts in there, then if we meet those certain requirements, it's an audit.

MR. EMERSON: That's a good point. Assuming you're only soliciting in Pennsylvania, which I think is probably the case for most of you, the audit threshold in Pennsylvania is, I think \$325,000, and it's based on your contribution; not your government grant.

I'm not that familiar. Do most of you have contributions every year of over \$325,000 a year? Not government grants; contributions. Take the gross.

A MEMBER: Bingo is what kills us, the weekly bingo.

MR. EMERSON: I hear you on that. I know that, at least initially, one of the things that I would do with that, even though, technically, it's not an exemption, the Bureau always has the ability to waive the audit requirement when there are, quote, special facts and circumstances. I would do that all the time with people where I would basically say, the bulk of your money is coming from bingo. You had \$500,000 but you only net 20,000. We don't want you have to spend \$10,000 for an audit. We would waive it at least for the first one.

The trouble is, the Bureau, and I think rightly so; if the statute authorizes to waive the audit when there's, quote, special facts and circumstances, they can't do that year after year. If that's the thing that's holding you back is the audit requirement, the Bureau is good about waiving that requirement, at least for the first one.

A MEMBER: On the gross income, you take the gaming out of that, correct; it is on the actual pay? Your revenue in; not gaming. The gaming is separate on --

MR. EMERSON: No. If you run -- It really works. The same thing that gets the Lion's Club. You sell a couple hundred thousand dollars worth of peanuts and fruit at Christmas and you net 10 grand or 15 grand, the way the law is written, it's your gross contribution. But you can make the argument, and I believe the Bureau would be receptive, of waiving it at least the first year. Quite frankly, I would try to make the argument that that's a special circumstance and you should be doing it.

I'll tell you, I have been on both sides of the fence. There are a lot of small groups where the person is skimming off tons of money. That's the whole Bureau's rationale. We're not going to waive an audit when you're doing \$500,000 worth of bingo because we know there's huge problems with bingo; people collecting under the table; just loosey-goosey record keeping. It's a tough thing. The audit is the kicker, you're right.

A MEMBER: Maybe I should have asked the other gentleman, but you just reminded me of it. We have state workers' comp for the association. And the law in Pennsylvania, even though you don't pay anybody, the president, secretary, everybody, we have to pay workers' comp rates for those of a nonprofit (c)(4) organization. We have elected officers, and we have to fill it. And the only way we don't have to pay it is if all those officers would sign off. If the fire school director goes to fire school and has an accident, we're paying workers' comp for all our officers.

My question is, do most outfits do that, or should I have been asking --

MR. EMERSON: One thing you learn in law school, you don't know the answer to it you don't try to fake it. I don't know anything at all about that.

A MEMBER: We asked our officers not to -- We are actually paying a workers' comp fee for all our president, secretary, treasurer, everybody in the organization to the state. But they all have workers' comp going to meetings and going to fire school and stuff like that.

A MEMBER: You say reporting like gross bingo income as contributions. What happens if you take in \$500,000 and 50,000 of it ends up being actual profit that goes to the organization. Now you're only showing 10 percent of the contribution actually benefiting the organization. It looks

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like, what happened to the other money? Is there some sort of solicitation you have to list the percentage of contribution that goes towards --

MR. EMERSON: When you're reporting your bingo on your 990, you have to report the gross amount, what you gross, and then minus your expenses and the net. That's something you always have to do. There's a lot of volunteer fire companies that contract with, not Municipal Marketing or professional fundraising counsels, but with professional solicitors and they get like five cents of every dollar that the public gives.

That's the thing the state regulators want that publicized. There's nothing illegal about that. It's very, very frustrating. I can't tell you how many volunteer fire companies heads I would talk to when I was charities director. Why do you sign this contract year after year with this solicitor that gets five cents of every dollar? Well, I agree. We'd like to get more, but we don't have to do anything and that gives us \$50,000 a year for doing nothing.

But, there's nothing illegal about that. The state can't do anything at all about that, because the Supreme Court decided years ago a series of cases that say the charity free-speech right. If they want to spend 99 cents of every dollar that people give them on fundraising and only one cent, or even nothing on program service, they have a right to do that. I would just caution you about that in terms of contracting with companies, that's just a lot of money to throw away.

A MEMBER: I know with the 990 there comes several requirements of having to have policies and procedures in your organization, like the whistle blower policy and so on.

MR. EMERSON: They're suggestive. They're not required. You would be foolish not to have them.

A MEMBER: Are there any that you suggest we implement as part of this process?

MR. EMERSON: I suggest that you have all of those policies. That's very controversial, that the IRS is basically suggesting that you have conflict of interest policy, whistle blower policy, retention policy. I can tell you, you're really foolish not to have those.

The whistle blower policy, a lot of people don't want that. I retired from the Commonwealth after 25 years. The last 12 years I was the charities director. I've been in enforcement for 25 years. Some of the very best cases, the biggest cases that we ever gotten were from whistle blowers. But you know what was really sad about those whistle blower cases, particularly like the ones that were blowing the whistle on a charity, an organization they worked for for years, that they believed in is, they came to the government as the last resort.

Every single whistle blower over all my 25-year career, particularly when they're blowing the whistle on a charity they're like, man, I love this organization. I have dedicated so many years of my life to it. But this is just not right what they're doing. And I've gone to my supervisor and he or she doesn't deal with it. I've gone to my supervisor's supervisor and they haven't done anything about it. I've gone to the board of directors and they haven't done anything about it. So, as a result, I'm coming to you guys. I know this is probably going to be detrimental to the organization; I feel really bad about it.

And I say, you really should. If you've got fraud or irregularity going on in your organization and you're the head of it or you're the board, you want people to feel comfortable to bring that to you. If you don't do that, eventually, they're going to rat you out to the government. Then you're going to be paying somebody like me gazillions of dollars to try to --

I try to save my client's money. That's like with what I do here. I sit here and I think, it would be so simple if most of you guys would just register. I file thousands and thousands of these. I spend five and a half, six hours a day going back and forth on Amtrak. I'm just sitting cranking these things out. Why don't these people do it and just get registered. But, the audit is probably the big thing.

A MEMBER: Why do they do gross bingo receipts?

MR. EMERSON: I'll give you the flip side. You're saying we only got 50,000, and the government is saying, but the public who we're supposed to be protecting, they gave you guys half a million dollars. We want to make sure that you actually properly accounted for the whole half million.

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I'll tell you, Bingo is ripe for all kinds of abuses. One of the cases we prosecuted was a guy--I can't remember his name--when we prosecuted him he was like 89 years old. This is a guy that started like 14 different charities decades ago. The majority of his money, and this guy was worth millions of dollars, came from bingo operations. He would set up all these charities. They were all registered in all the states they were supposed to be registered in.

They filed their 990s into the IRS and all their paperwork. And if you looked at the 990, you'd never know this guy was even involved with these organizations, even though he started them and he ran them. The reason he did this, all you had to disclose at that time, people that are being paid for the \$50,000, so he'd have charity A paying \$49,500; charity B paying \$48,000; charity C paying forty. The guy was making hundreds and hundreds and hundred of thousands of dollars a year. And you, the IRS regulator, would have no clue that this guy was involved in doing this type of stuff. There were all kinds of problems. But, that's the reason.

A MEMBER: The reason I asked, because last year we ended up spending \$9,000 to a public accountant to do an accounting form so we can cut a check to the state for \$150.00.

MR. EMERSON: I hear you.

A MEMBER: We'd rather cut a check to the state for \$9,000 than to him.

MR. EMERSON: Again, the only thing I would say, and the same thing I said to Tom's group years ago--I thought they were going to lynch me--go to your legislator. Don't direct your anger at poor Mr. Patterson here, the new guy. He got lucky; he's now the Bureau director. He's just trying to do his job.

If he becomes aware of a volunteer fire company that has hired Municipal Marketing and they're not registered, he's not doing his job if these people don't follow up. It's not like he's trying to make life miserable for you. The charities' people, the clerks that do these things, I think a lot of people think that they scrutinize and they're just looking for a way to turn you down or nail you. No. They just want to get that thing off their desk. They want to, okay, approve it; done till the next year. They're not out there to get you or make your life miserable. They're supposed to be enforcing this law. If they don't, they can get written up and they can get nailed; they can lose their jobs.

MR. SAVAGE: Let's thank Carl. If you want to see why we have some of the problems we do, go to [firefighterbehavior.com](http://firefighterbehavior.com) website. We are tracking incidents involving emergency services folks.

Don, if you would, most of you know about the Right-to-Know Law the fire departments are covered by. We've been trying to get fire companies excluded from that. Don had a hearing the other day on the Right-to-Know law. A group got up and made a speech about getting out from under the Right-to-Know law. Don, if you could share that with us.

MR. KUNKLE: Pennsylvania Newspaper Association says, we have expressed significant concern from the past, but any language that brought exemption to these organizations, referring to volunteer fire companies and ambulance services, Pennsylvania has seen more policy, I guess, than its share of allegations of wrongdoing by individuals of volunteer fire companies, and then it goes on to talk about just central Pennsylvania ones.

Like, 2010, Goldsboro had \$100,000 embezzled. Same guy. A 70-year-old treasurer came across the river to Pennbrook and took the Pennbrook Fire Company \$112,000. They talk about Montgomery County Fire Academy, \$168,000. Unfortunately, a dozen bad apples will paint us all with the same brush, but it exists.

MR. EMERSON: I will say along those lines, and I was shocked when I found this. Years ago I had to do a training session for the District Attorney's Association. I had my staff pull all the files we recommended and had people prosecuted criminally for serious violations. I was shocked to find out that, with the exception of one case, every single case we referred for criminal prosecution involved volunteers of small organizations. The treasurer of a local baseball league, embezzling \$550,000 because he had a gambling problem.

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That's what's really kind of weird about Pennsylvania's statute is that, it kind of assumes that if all your fundraising is done by volunteers or members who are not compensated directly or indirectly, you get a pass. You don't have to register. It's only when you go out and hire a guy like this and pay someone money, that's the time you get registered.

This is not just with volunteer fire companies and ambulance association, it's with little animal rescue shelters and baseball and football leagues and stuff like that. When you have small organizations, that's where it's really big problems, and it makes sense. No one wants to be the treasurer. How do you get to become the treasurer in an organization? I know you're not a CP, but didn't you have a class in accounting 30 years ago. Why don't you be the treasurer?

Then people says, I don't know. The books don't seem right here. Then you talk to Harry. You don't want me to do it, I don't want to do it. And the guy is stealing you blind.

You talk about bingo, you bring back all these memories. This was a grandmother and she's running somebody's bingo. At the time I left, they were putting together a major case on someone's grandmother stealing hundreds of thousands of dollars from the local volunteer fire company or somebody who was running a bingo thing. Not everybody that's a volunteer is doing it out of the goodness of their heart, and you have to be mindful of that. You don't want that negative publicity. That will kill your fundraising.

The Bureau of Charitable Organizations administers the state's charitable solicitation law. It also maintains registration and financial information on over 11,000 charities soliciting in the Commonwealth, as well as more than 400 professional solicitors and fundraising counsels.

Contact PA Bureau of Charitable Organizations at: [www.dos.state.pa.us/portal/server.pt/community/bureau\\_of\\_charitable\\_organizations/12444](http://www.dos.state.pa.us/portal/server.pt/community/bureau_of_charitable_organizations/12444) 207 N. Office Building, Harrisburg, PA 17120;

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