

Date Issued: May 14, 1985 (AGO 85-19)

Requested by: Honorable Ben Meier  
Secretary of State

- QUESTION PRESENTED -

Whether the American Red Cross is subject to the licensing requirements of the Charitable Organizations Soliciting Contributions Act of N.D.C.C. chapter 50-22.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the American Red Cross is not subject to the licensing requirements of the Charitable Organizations Soliciting Contributions Act of N.D.C.C. chapter 50-22.

- ANALYSIS -

Charitable organizations soliciting contributions are governed by the provisions of N.D.C.C. chapter 50-22. N.D.C.C. section 50-22-02, provides in part:

50-22-02. LICENSE TO SOLICIT - TERM - REVOCATION. No charitable organization shall solicit contributions from persons in this state by any means whatsoever without first having obtained a license from the secretary of state . . . .

The only exception provided to this strict licensing requirement is granted to institutions of higher learning and churches pursuant to N.D.C.C. section 50-22-01(1).

There is no federal court decision which has directly answered the question of whether the American Red Cross is subject to state charitable solicitation licensure. However, in *Department of Employment v. United States* 385 U.S. 355 (1966), the United States Supreme Court concluded that the American Red Cross was created by Congress to carry out the treaty provisions of the Geneva Convention and, as such, was an instrumentality of the federal government.

Moreover, the issue of whether federal instrumentalities are subject to state regulation was addressed in the case of *Hancock v. Train* 426 U.S. 167, 179 (1976), in which the Supreme Court reaffirmed its holding in *Mayo v. United States* 319 U.S. 441, 447 (1943), by stating that:

. . . >Where Congress does not affirmatively declare its instrumentalities or property subject to regulation, the federal function must be left free of regulation. >Quotation marks omitted.!

In *Hancock supra* the State of Kentucky attempted to require a federal installation to obtain a state operating permit. The Court held that the state could not require a federal installation or instrumentality to comply with the state regulation unless Congress had specifically subjected the instrumentality to state regulation.

As in Hancock supra North Dakota's charitable solicitation license serves as a state operating permit. Moreover, Congress has not specifically subjected the Red Cross to state regulation. See 1961 N.D. Attorney General's Opinion.

Therefore, the American Red Cross is not subject to the licensing requirements of the Charitable Organizations Soliciting Contributions Act of N.D.C.C. chapter 50-22. Furthermore, this opinion supersedes 1961 N.D. Attorney General's Opinion 26.

Moreover, this opinion is limited to the issue of federal instrumentalities soliciting charitable contributions. Other forms of state regulation of federal installations or instrumentalities are not affected by this opinion.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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