

**STATE OF WEST VIRGINIA**

**PRELIMINARY REVIEW OF THE  
COMMISSION ON CHARITABLE  
ORGANIZATIONS**

Court Decision  
&  
Infrequency of Meetings  
Renders Commission  
Ineffective

**OFFICE OF LEGISLATIVE AUDITOR**  
Performance Evaluation & Research Division  
**CAPITOL BUILDING**

**CHARLESTON, WEST VIRGINIA 25305**

PE 94-13-13

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

**Building 5, Room 751A**  
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**Antonio E. Jones, Ph.D.**  
**Director**

January 6, 1995

The Honorable A. Keith Wagner  
State Senate  
Box 446  
Iaeger, West Virginia 24844

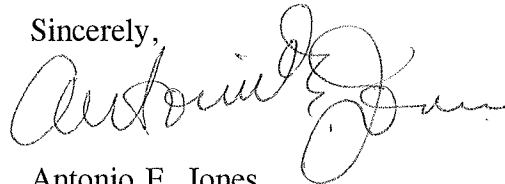
The Honorable Joe Martin  
House of Delegates  
Building 1, Room 213E  
1900 Kanawha Blvd. East  
Charleston, West Virginia 25305

Gentlemen:

This is to transmit a preliminary review of the Commission on Charitable Organizations on which we will report to the Joint Committee on Government Operations on Sunday, January 8, 1995. The issue covered herein is the "Court Decision and Infrequency of Meetings Renders Commission Ineffective."

Let us know if you have questions.

Sincerely,



Antonio E. Jones

AEJ/wsc

Enclosure

**Issue Area 1: Court Decision and Infrequency of Meetings Renders  
Commission Ineffective.**

The preliminary performance review of the Commission on Charitable Organizations conducted by the Performance Evaluation and Research Division (PERD), in accordance with Chapter 4, Article 10, Section 11 of the WV Code, as amended, finds the Commission to be limited in its ability to effectively assist the Secretary of State in protecting the citizens of West Virginia from fraudulent fundraising activities. The Commission's limitations are due in part to:

- \*The removal of its authority to hold hearings and make adjudications as a result of a 1990 court decision; and
- \*The infrequency of meetings since 1990.

Consequently, the roles of enforcing the Charitable Solicitation Act and advising the Secretary of State have been greatly reduced.

**Court Decision**

In 1990, the Commission on Charitable Organizations was stripped of its authority to hold hearings and make adjudications when the U.S. Fourth Circuit Court of Appeals issued a decision that ruled unconstitutional West Virginia's administrative procedures for denying a charitable organization's right to solicit.<sup>1</sup> The offending statute was amended during the legislature's 1990 special session to conform to the court's decision. As a result, the Commission's primary role became, as stated in the Secretary of State's 1992 annual report, to "remain active in reviewing investigations and enforcement procedures...[and to] evaluate legislative proposals and assist in working for its passage."

**Infrequent Meetings**

Since 1990, the Commission on Charitable Organizations has held five meetings: one in 1990; two in 1991; one in 1992; one in 1993; and none in 1994. In the PERD's analysis of the minutes of these meetings, their general nature was of the Secretary of State and his staff briefing commissioners on settlement agreements, pending legal action against charities and legislative initiatives to strengthen the solicitation act. The Secretary of State informed the PERD that it was in this latter area where the Commission has played its most active

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<sup>1</sup> In *Famine Relief Fund v. State of West Virginia* 1990, the court ruled the West Virginia Solicitation of Charitable Funds Act did not afford the charity sufficient due process before imposing restraint on speech. 905 F.2d 747 (4th Cir. 1990).

role. He said commissioners had been instrumental in proposing language to be used for the amendment pertaining to religious exemptions. Further analysis of the minutes, however, did not show a role for the Commission in advising the Secretary beyond a few minor recommendations regarding actions to be taken and voting to recommend that Marshall University Foundation register with the Secretary of State's office.

Thus, with the U.S. Circuit Court decision, subsequent legislative changes and its infrequent meetings the utility of the Commission on Charitable Organizations has been reduced. The PERD believes the discontinuance of the Commission would not have an adverse effect on the Secretary of State's ability to protect the people of West Virginia from deceptive and dishonest solicitation.

**Recommendation**

*The Performance Evaluation and Research Division recommends the Commission on Charitable Organizations be terminated effective July 1, 1995.*

**Appendix**

Commission on Charitable Organization  
Minutes from 1990-1993 Meetings

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

#### MINUTES

#### COMMISSION ON CHARITABLE ORGANIZATIONS

JULY 20, 1990 10:00 a.m.

GOVERNOR'S CONFERENCE ROOM

Present: Ken Hechler, Chairman  
Larry Beckett, Human Services  
Polly Diller  
Martha Merical, Health Department  
Barbara Starcher

Absent: Dan Vannoy

Also Present: Cathy Frerotte, Executive Assistant  
Bob Wilkinson, Deputy Secretary of State  
Tim Winslow, Attorney General's office

The minutes of the May 30, 1989 meeting were approved. Larry Beckett asked the status of the "Tucker" amendment which allows youth athletic organizations to be exempt from registering as charitable organizations. Chairman Hechler confirmed that it was still in the law and that it was a "high priority" of his to remove it. The letter which the Commission had voted to send to the legislative leadership expressing their concerns with the Tucker amendment was never written.

Chairman Hechler pointed out that the position vacated by Olaf Walker has yet to be filled by the Governor's office.

Chairman Hechler indicated that the June decision of the 4th Circuit upheld the reasonable donor expectation standard and several other sections of the West Virginia Charity Law, but struck down the section dealing with the issuance of administrative orders that stopped solicitation activities by charitable organizations. To conform with the court decision the Legislature passed a bill that addressed the due process concerns of the court's opinion. The Legislature exempted registration of political party executive committees conducting raffles. Instead of issuing an order to cease solicitation, the secretary of state must now seek a circuit court order to stop the illegal activities of charitable organizations.

Tim Winslow then said the Attorney General was concerned about the scope of the circuit court's injunction. The Attorney General has petitioned the circuit court to clarify the scope of its decision, so that West Virginia will know whether the newly changed statute will address all the court's concerns. In response to Tim Winslow's question on needed changes in the commission's rules to reflect the court's decision, Chairman Hechler said that copies of the new rules would be forwarded to the commission.

Bob Wilkinson reviewed the status of the charity reform bill proposed for the 1991 session of the Legislature.

Tim Winslow discussed the following negotiated settlement agreements:

1. NEMA paid \$5000 to West Virginia and \$7,393 was returned to contributors.
2. The professional fundraiser for Transafrica, Cravers, Mathews and Smith, paid a \$5000 settlement.
3. The Christian Action Network agreed to a \$1000 reimbursement to the state and wrote a letter to its contributors offering to return their donations, after soliciting without being registered.
4. Negotiations are still pending with the Dakota Indian Foundation which solicited \$4000 without being registered. The state filed a court action and Dakota has offered to make an agreed upon contribution to some designated charity in the state.
5. Although Habitat for Humanity claims a religious exemption from registering, the commission agreed that Habitat should be made to register.

The committee agreed to meet in November to review the charity reform bill. The meeting adjourned at 11:41 a.m.



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COMMISSION ON CHARITABLE ORGANIZATIONS MEETING  
STATE CAPITOL  
SECRETARY OF STATE'S OFFICE  
MARCH 12, 1991  
10:00 AM

### AGENDA

Minutes of the July 20, 1990 Meeting  
Famine Relief Fund, Inc. Settlement Agreement  
Dakota Indian Foundation Settlement Agreement  
Adopted Rules  
Legislative Update

MINUTES

COMMISSION ON CHARITABLE ORGANIZATIONS

MARCH 12, 1991 - 10:00 a.m.

PEOPLE'S OFFICE

Present: Ken Hechler, Chairman  
Rev. David DuBois, Public Member  
Martha Merial, Health and Human Resources  
Polly Diller, Public Member  
Barbara Starcher, Public Member

Absent: Bob Lamont, Attorney General's Office  
Larry Beckett, Health and Human Resources

Also Present: Cathy Frerotte, Executive Assistant  
Bob Wilkinson, Deputy Secretary of State

The minutes of the July, 20, 1990 meeting were approved.

Chairman Hechler welcomed the new member of the Commission, Reverend David DuBois.

Hechler discussed the decision of the Fourth Circuit which stated that the Secretary of State could no longer revoke the authority of charities to register and solicit funds, but now must go to court to stop illegal solicitation. In July the Attorney General petitioned the U.S. District Court to see whether we could continue to enforce our new charity law which was passed by the

legislature in June 1990. On October 16, 1990 the court stated that even though we couldn't enforce our 1986 law we could enforce the amended law which sets up the procedure to take charities directly to court for violating the law. Hechler stated that the rules and regulations of the Commission were also amended to conform with the court decision.

Hechler reviewed the settlement agreement reached with Famine Relief after they were discovered soliciting in West Virginia without being registered. Famine Relief agreed to refund all solicited contributions by West Virginians, pay a penalty of \$100 per any future violations, and pay \$1,000 plus \$500 in court and attorney fees. Hechler also brought the Commission up to date on Famine Relief's attempt to obtain \$334,000 in attorney fees from the Secretary of State.

Hechler also discussed another settlement agreement that was reached with the Dakota Indian Foundation because they were soliciting without being registered. The terms of the settlement agreement required the Dakota Indian Foundation to pay \$2,500 as a penalty for the violations. This money went to the Attorney General.

Hechler advised the Commission that the 1991 Charity Reform Act cleared the House Judiciary Committee, but the bill was double referenced to the Finance Committee because it contained language on setting up an account for the

penalty funds, and failed to pass out of Finance Committee. Chairman Hechler stated that he would like to get an early start on this next year.

Cathy Frerotte discussed the revisions of the Judiciary Committee in its substitute bill which accommodated groups who were concerned with the change in the religious exemption. The committee substitute included synagogues and organizations that are directly related to them in the religious exemption.

Hechler vowed he was still determined to have the "Tucker Amendment", which exempts youth athletic organizations from registering, removed from the law.

The meeting was adjourned at 11:00 a.m.

KEN HECHLER  
Secretary of State

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Deputy Secretary of State

ROBERT E. WILKINSON  
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COMMISSION ON CHARITABLE ORGANIZATIONS MEETING  
STATE CAPITOL  
SECRETARY OF STATE'S OFFICE  
DECEMBER 11, 1991  
1:30 PM

AGENDA

Minutes of the March 12, 1991 Meeting  
Proposed Charitable Legislation  
Current Charitable Enforcement Strategy

MINUTES

COMMISSION ON CHARITABLE ORGANIZATIONS

DECEMBER 11, 1991 - 1:30 p.m.

PEOPLE'S OFFICE

Present: Ken Hechler, Chairman  
Martha Hill, Health & Human Resources  
Polly Diller, Public Member  
Barbara Starcher-Myers, Public Member  
Jim Carbone, Attorney General's Office  
Larry Beckett, Health & Human Resources

Absent: Rev. David DuBois, Public Member

Also Present: Cathy Frerotte, Executive Assistant

The minutes of the March 12, 1991 meeting were approved.

Chairman Hechler welcomed Jim Carbone, the new member of the Commission, representing the Attorney General.

Chairman Hechler stated that the 1991 Charity Reform Act cleared the Judiciary Committee in the last regular session of the legislature but failed to get a vote in the House of Delegates or the State Senate because it was double referenced to the House Finance Committee, due to its provision to set up an account for penalty funds. Cathy Frerotte discussed the revisions of the House Judiciary Committee substitute bill pertaining to synagogues and organizations that are directly related to them in the religious exemption. This committee substitute will be automatically taken up in the legislative session this year. Jim Carbone suggested a change in the proposed bill that would define the word "solicit" in the charity law to facilitate successful enforcement. The Commission supported the proposal of Mr. Carbone and agreed to work for passage of the bill.

Hechler discussed current charitable enforcement actions. One was an action against Birch Associates, a fundraiser for the Charleston Jaycees. Jim Carbone, the attorney assigned to the case, stated that Birch Associates acts as a marketing agency for the Charleston Jaycees, however, Birch Associates, denies they act in this capacity and has refused to register. The basic issue involved is whether or not Birch Associates qualifies as a professional solicitor and must file a registration and bond with the Secretary of State. The Attorney General will pursue this action against Birch Associates.

Hechler discussed another action in Marshall County where the unregistered Deputy Sheriffs' Association contracted with a registered professional fundraiser, JAK Productions, to solicit funds on their behalf. All attempts to get the Deputy Sheriffs' Association registered had failed, so the Secretary of State's investigator, Damon Slone was sent there and he was successful in closing the fund-raising down until the Deputy Sheriffs filed a complete registration.

Hechler reviewed a newspaper article from the Gannett News Service which gave information on evaluating charitable organizations before making donations. He also reviewed some Council of Better Business Bureau reports which the Secretary of State relies on for information about charitable organizations. The reports are sent to people who write the Secretary of State to inquire about various organizations. Hechler stated he found the Council of Better Business Bureau Philanthropic Advisory Service to be a pretty thorough organization.

Hechler reviewed the letter that was mailed to the Commission last May about Judge Knapp's ruling denying Famine Relief's outrageous demand that they be awarded fees and expenses of \$343,000 for their representation against the State of West Virginia.

Hechler also discussed the memorandum to be sent to professional fundraisers to advise them to complete their registration requirements more accurately. The Commission decided that the memorandum should be sent to all registered professional fundraisers.

The meeting adjourned at 2:20 p.m.



MINUTES

COMMISSION ON CHARITABLE ORGANIZATIONS

DECEMBER 2, 1992 - 10:00 a.m.

GOVERNOR'S CONFERENCE ROOM

Present: Ken Hechler, Chairman  
Martha Hill, Health & Human Resources  
Barbara Starcher-Myers, Public Member  
Jim Carbone, Attorney General's Office

Absent: Rev. David DuBois, Public Member  
Larry Beckett, Health & Human Resources  
Polly Diller, Public Member

Also Present: Cathy Frerotte, Executive Assistant

The minutes of the December 11, 1991, meeting of the Commission on Charitable Organizations were approved subject to amending a typographical error.

Chairman Hechler reviewed with the Commission the Consent Order an Permanent Injunction against Birch Associates filed in the Circuit Court of Kanawha County. The order resulted in Birch Associates paying a \$500 penalty, \$500 in attorney fees and \$250 for registration fees they were obligated to pay for the years they solicited without registration. It was noted that under the 1992 legislation, the funds would go into a special fund to be used for enforcement.

An Assurance of Compliance filed against West Virginia Veterans Magazine on November 10, 1992 was reviewed by the Commission. The magazine had solicited funds without registering with the Secretary of State. Hechler stated that the publisher of the magazine had failed to comply with the terms of the agreement. Jim Carbone reported that he filed a complaint in court to enjoin

the publisher from doing business in West Virginia and to require him to pay costs and attorney fees.

Chairman Hechler discussed the 1992 charitable legislation that was passed to strengthen the law. He commended Senator Jim Rowe and Senator Bob Holliday for their tremendous efforts in getting the legislation passed. Hechler asked the Commission if they had suggestions for amendments to the act and if they thought it would be good timing to go back to the legislature this session. Jim Carbone expressed that for clarification purposes the words "charitable purpose" need to be defined and that he would like to have some of the language in the exemptions more narrowly defined. It was decided that an interpretive rule could be issued to more clearly define the exemption language.

Chairman Hechler discussed the impressive Guide for Charities and Fund Raisers published by the Massachusetts Attorney General's office. He noted the Better Business Bureau in Massachusetts had helped with the project and said unfortunately West Virginia did not have a Better Business Bureau to help with this type of excellent project.

Cathy Frerotte stated that the Massachusetts material contained some good suggestions relating to charitable organizations being responsible for approving the scripts used by the fund raisers. She also noted that some scripts misrepresented the percentage or amount of funds retained by the fund raiser. Jim Carbone suggested that a civil enforcement action could be brought so the courts could determine if the scripts were misleading. Martha Hill suggested fixing the statute since a court ruling could go against the Secretary of State.

The Commission also discussed the problems with regulating the "wishing well" type of fund-raising that is becoming very popular. Requiring some type of disclosure on the "wells" and requiring specific information in the contract between the fund raiser and the charitable organization was suggested as a means to regulate this type of solicitation.

Jim Carbone reviewed actions concerning charities and their professional fund-raisers that are pending in the Attorney General's office. He discussed the feasibility of bringing legal actions against the Regular Veterans Association, Heritage Publishing, B&B Presentations, and the National Deputy Sheriff's Association. Jim Carbone also mentioned that Pennsylvania sued the American Association of State Troopers and their professional fund raiser, Telcom Marketing Services for making false statements. He advised that West Virginia could bring a separate action against these organizations if an investigation reveals they are making the same type of misrepresentations in West Virginia.

Members of the Commission discussed the relationship of charitable organizations to their professional fund raisers and the amount of funds retained by the fund raiser. Secretary Hechler suggested issuing a warning to some of the charities that consistently take a small guaranteed amount from the fund raiser with no consideration to the total amount collected in the name of the charity.

The meeting adjourned at 11:20 a. m.

MINUTES

COMMISSION ON CHARITABLE ORGANIZATIONS

NOVEMBER 22, 1993 - 10:30 A.M.

PEOPLE'S OFFICE

Present: Ken Hechler, Chairman  
Martha Hill, Health & Human Resources  
Barbara Starcher-Myers, Public Member  
Jim Carbone, Attorney General's Office  
Larry Beckett, Health & Human Resources  
Polly Diller, Public Member  
Rev. David DuBois, Public Member

Also Present: Cathy Frerotte, Executive Assistant

The minutes of the December 2, 1992, meeting of the Commission on Charitable Organizations were approved.

Chairman Hechler discussed the investigation of BarKen Productions who advertised a fund-raising benefit for America's Missing Children without a current contract. In conjunction with the Attorney General's office, the Secretary of State filed a petition in the Circuit Court of Cabell County enjoining BarKen Productions from continuing their unauthorized solicitation. This action resulted in BarKen Productions being ordered to pay 25% of their net proceeds to the Time Out Youth Shelter in Huntington and \$1,120 to the Secretary of State for attorney fees and court costs. The investigation of America's Missing Children will continue because of several serious complaints that were received.

The Commission discussed the ongoing dilemma of getting Habitat for Humanity International of Americus, Georgia to register as a charitable organization. After a lengthy discussion of options the Commission authorized Chairman Hechler to contact the

local Habitat for Humanity chapters to get their input on the International Chapter's position and to see if they can't keep the tithe paid to the national organization in West Virginia.

After an investigation by the Secretary of State and the Attorney General, it was determined that West Virginia Veterans Magazine, an Ohio Corporation, was soliciting in West Virginia without registering and that their phone script was misleading. The organization signed an Assurance of Compliance on November 10, 1992, however, they failed to abide by it. Therefore, a complaint was filed in the Circuit Court of Kanawha County on February 1, 1993. The Commission was advised that a hearing was scheduled for December 16, 1993, to determine the amount of restitution to be paid to the donors and the amount of penalties to be assessed against the organization.

Chairman Hechler discussed Marshall University Foundation's exemption that was granted in 1987 because the Foundation was directly responsible to the University. Recently, Marshall University Foundation decided to review their exempt status and determined that the Marshall University Foundation was no longer eligible for the exemption. The Commission voted to advise the Marshall University Foundation to register.

The Commission heard a report on the results of the investigation of the American Association of State Troopers and their professional fund raiser, State Trooper Associates. The investigation revealed that the fund raiser had misrepresented the amount of funds paid to the charitable organization and had falsely identified themselves as state troopers. A complaint and petition

for injunction is to be filed against both organizations this month.

Jim Carbone also reported that the registration of the Chief's of Police National Drug Task Force has been denied because of the inability of the organization to adequately maintain a fiduciary relationship with the donors' contributions.

Cathy Frerotte discussed the registration application irregularities of the American Indian Relief Counsel, formerly Famine Relief Fund. She indicated that some of the transactions of the organization did not appear to meet the provisions of the West Virginia law. The transactions involved self dealing with the former chief executives of Famine Relief and the current chief executive of the organization. The application was referred to Jim Carbone for additional review and possible litigation.

An investigation of the professional fund raiser, American Trade and Convention Publications revealed that they contracted with Vietnam Veterans of America and the AmVets National Headquarters to provide fund-raising services. This fund raiser subcontracted the fund-raising to nonregistered fund raisers who were not employees of American Trade and Convention Publications nor were they covered under their bond. Notifications were sent to the nonregistered fund raisers telling them of their need to be registered and bonded. A law suit to enjoin the subcontractors from soliciting contributions will be filed in the event registrations and bonds are not received.

The Commission was advised that the Children's Wish Foundation was being investigated because they inflated their expenditures for

program services by relying on in-kind contributions. Jim Carbone reported that a subpoena was issued in May 1993 demanding all documents reflecting the number and kind of wishes granted to terminally ill children. He advised that legal action was being considered.

Allburn Attractions, a professional fund raiser providing fund-raising services in West Virginia failed to register with the Secretary of State after repeated notifications. After a complaint was drafted and sent to the organization, they registered and filed a bond with the Secretary of State. Settlement negotiations have been initiated.

The meeting adjourned at 12:00 noon.

Discussed on page two  
in the enclosed minutes.

CHARLESTON GAZETTE  
**Publishing  
impostor  
told to pay**

12-17-93  
By Lawrence Messina  
STAFF WRITER

An Ohio man who posed as the publisher of a magazine for West Virginia veterans must return the money he raised for his effort from county residents and businesses, a Kanawha circuit judge ruled Thursday.

Paul David Young must also pay a \$2,500 civil fine, Judge Tod Kaufman ordered, for misleading people in the 1992 telephone fundraising scheme.

Kaufman ruled on a suit filed in February by the attorney general's office against Young, a professional fund-raiser based in Columbus. Young stood accused of misleading at least 28 Kanawha County residents and businesses when he solicited more than \$600 from them in the spring of 1992.

"It was a pretty fair ruling," said James Carbone, the assistant attorney general who handled the case. "Kaufman seemed pretty appalled by what took place."

Young had set up a telephone "boiler room" in Charleston in April 1992, according to court documents. Young told state officials he would use it to raise money for his alleged annual publication, the West Virginia Veterans' Magazine.

But Young's telephone campaign allegedly implied to would-be donors the money raised would benefit state veterans' groups and programs, Carbone said. Such a claim would require Young to register with the secretary of state. When he did not, officials from the secretary of state's office confronted Young.



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*Performance Evaluation and Research Division*

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Antonio E. Jones, Ph.D.  
Director

January 6, 1995

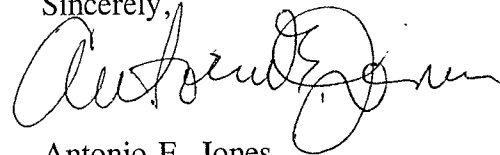
Mr. Ken Hechler  
Secretary of State  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0770

Dear Mr. Hechler:

This is to transmit a preliminary review of the Commission on Charitable Organizations which we will report to the Joint Committee on Government Operations on Sunday, January 8, 1995. The issue covered herein is the "Court Decision and Infrequency of Meetings Renders Commission Ineffective.

Let us know if you have questions.

Sincerely,



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