

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

February 4, 2016

Via mail and email

Dan Price



Re: Flintwater.com Charitable Sales Promotion

Dear Mr. Price:

The Attorney General regulates charitable solicitations in Michigan under the Charitable Organizations and Solicitations Act, MCL 400.271 *et seq.* Also subject to the Solicitations Act are charitable sales promotion, which are defined as “any advertising or sales activities that include a statement or representation that the purchase or use of the goods or services offered for sale will benefit, in whole or in part, a charitable organization or charitable purpose.” MCL 400.272(b); see also MCL 400.293a(1).

It has come to the Department of Attorney General’s attention that you are the operator of the website Flintwater.com, which sells a Flintwater.com bracelet for \$6.99 and advises that a “percentage of all sales will go towards the Flint water crisis . . .” At the bottom of the page are logos for the United Way, Pure Michigan, Flint Water Response Team, and the American Red Cross.

The United Way has informed the Department of Attorney General that it has not granted permission to Flintwater.com to use its logo or to raise funds on its behalf.

Section 18(1) of the Solicitations Act, MCL 400.288, prohibits those subject to the act from engaging in various misleading and deceptive acts, including:

(b) Represent or imply that a person soliciting contributions or other funds for a charitable organization has a sponsorship, approval, status, affiliation, or other connection with a charitable organization or charitable purpose that the person does not have.

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(c) Represent or imply that a contribution is for or on behalf of a charitable organization, or using an emblem, device, or printed material belonging to or associated with a charitable organization, without first obtaining written authorization from that charitable organization.

(g) Make a misrepresentation to a person by any manner that would lead that person to believe that another person sponsors, endorses, or approves a solicitation effort if that other person has not given written consent to the use of his or her name for that purpose.

A complete list of Section 18 prohibited acts is attached to this letter. Violations of this section are punishable with civil fines of up to \$10,000 per violation. Section 23 of the Solicitations Act, which lists acts which constitute crimes and their associated penalties, is also attached.

This letter notifies you that using the logos of the United Way, Pure Michigan, Flint Water Response Team, and the American Red Cross without the permission of these organizations violates the Solicitations Act. Since receiving the United Way's initial complaint, the United Way has informed us that they contacted you and you agreed to take the logos down. Thank you for cooperating with their request. In the future, before displaying the logos of any charitable organizations on your website, please ensure that you have written permission from the respective charities.

Please respond to this letter in writing *by February 18, 2016*. Your response should (1) confirm that you have ceased using any of the above logos (or produce written documentation showing that you have permission from each organization to use its logo); (2) advise of the percentage of each sale that will proceed to charity; and (3) advise regarding the identities of any charitable organizations to whom you intend to contribute. You should also be sure to keep accurate records of all sales as the Department of Attorney General may require you to account for all funds raised, including amounts contributed to charitable organizations or charitable purposes.

Lastly, your website includes a "donate now" button. Currently, the button does not appear to allow donations; but if you are collecting charitable donations or begin doing so in the future, you may be required to register under the Solicitations Act. Instructions for registering are at www.mi.gov/agprocedures under "charitable solicitations."

If you have any questions regarding this letter, you may contact me directly. My contact information is below.

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Sincerely,



William R. Bloomfield
Assistant Attorney General
Corporation Oversight Division
(517) 335-8802

WRB

Enclosures: (1) MCL 400.288
(2) MCL 400.293

cc: Scott Dzurka, United Way

CHARITABLE ORGANIZATIONS AND SOLICITATIONS ACT (EXCERPT)
Act 169 of 1975

400.288 Prohibited conduct; publishing names of contributors; identification.

Sec. 18. (1) A person subject to this act, or an employee or agent of a person subject to this act, shall not do any of the following:

(a) Engage in a method, act, or practice in violation of this act or a rule promulgated under this act; any restriction, condition, or limitation placed on a registration or license; or any order issued under this act.

(b) Represent or imply that a person soliciting contributions or other funds for a charitable organization has a sponsorship, approval, status, affiliation, or other connection with a charitable organization or charitable purpose that the person does not have.

(c) Represent or imply that a contribution is for or on behalf of a charitable organization, or using an emblem, device, or printed material belonging to or associated with a charitable organization, without first obtaining written authorization from that charitable organization.

(d) Use a name, symbol, or statement so closely related or similar to a name, symbol, or statement used by another charitable organization or governmental agency that use of that name, symbol, or statement would tend to confuse or mislead a solicited person.

(e) Use a fictitious or false name, address, or telephone number in any solicitation.

(f) Make a misrepresentation to a person by any manner that would lead that person to believe that another person, on whose behalf a solicitation effort is conducted, is a charitable organization or that all or any part of the proceeds of a solicitation effort are for charitable purposes.

(g) Make a misrepresentation to a person by any manner that would lead that person to believe that another person sponsors, endorses, or approves a solicitation effort if that other person has not given written consent to the use of his or her name for that purpose.

(h) Make a misrepresentation to a person by any manner that would lead that person to believe that registration or licensure under this act constitutes endorsement or approval by a department or agency of any state or the federal government.

(i) Represent or imply that the amount or percentage of a contribution that a charitable organization will receive for a charitable program after costs of solicitation are paid is greater than the amount or percentage of a contribution the charitable organization will actually receive.

(j) Divert or misdirect contributions to a purpose or organization other than that for which the funds were contributed or solicited.

(k) Falsely represent or imply that a donor will receive special benefits or treatment or that failure to make a contribution will result in unfavorable treatment.

(l) Make a misrepresentation to a person by any manner that would lead that person to believe that a contribution is eligible for tax advantages unless that contribution qualifies for those tax advantages and all disclosures required by law are made.

(m) Falsely represent or imply that a person being solicited, or a family member or associate of a person being solicited, has previously made or agreed to make a contribution.

(n) Employ any device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise.

(o) Represent that funds solicited will be used for a particular charitable purpose if those funds are not used for the represented purpose.

(p) Solicit contributions, conduct a charitable sales promotion, or otherwise operate in this state as a charitable organization, professional fund raiser, or professional solicitor, except in compliance with this act.

(q) Aid, abet, or otherwise permit a person to solicit contributions or conduct a charitable sales promotion in this state unless the person soliciting contributions or conducting the charitable sales promotion complies with this act.

(r) Fail to file any information or reports required under this act.

(s) Fail to comply with a person's request to remove, or not to share, the person's personal information, including, but not limited to, the person's name, address, telephone number, or financial account information, from any list utilized by a charitable organization or professional fund raiser for solicitation purposes; or selling, leasing, licensing, sharing, or otherwise allowing any third-party access to any of the person's personal information, except as specifically required by law or court order.

(t) Solicit or receive a contribution or conduct a charitable sales promotion for, or sell memberships in, a charitable organization subject to this act if that charitable organization is not registered under this act.

(u) Submit any of the following to the attorney general:

(i) A document or statement that purports to be signed, certified, attested to, approved by, or endorsed by a

person if that signature, certification, attestation, approval, or endorsement is not genuine or was not given by that person.

(ii) A document containing any materially false statement.

(v) Violate the terms of an assurance of discontinuance or similar agreement accepted by the attorney general and filed with the court under this act.

(w) For a charitable organization, fail to verify that all professional fund raisers with which the organization has contracted for fund-raising services are currently licensed under this act.

(x) For a professional fund raiser, fail to provide verification of current licensing status and inform any charitable organization with which it has contracted for fund-raising services of any changes affecting its licensing or bonding, in writing, within 14 days of the change.

(y) For a charitable organization, submit financial statements, including IRS form 990, 990-EZ, 990-PF, or other 990- series internal revenue service return, or any other financial report required under this act, that contain any misrepresentation with respect to the organization's activities, operations, or use of charitable assets.

(z) Wear a law enforcement or public safety uniform or clothing similar to a law enforcement or public safety uniform when making a face-to-face solicitation or collection of contributions.

(2) This section does not prevent the publication of names of contributors without their written consent in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

(3) A charitable organization, whether or not exempt from this act, shall supply to each solicitor and each solicitor shall have in his or her immediate possession identification that sets forth the name of the solicitor and the name of the charitable organization on whose behalf the solicitation is conducted.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 2010, Act 377, Eff. Mar. 30, 2011.

CHARITABLE ORGANIZATIONS AND SOLICITATIONS ACT (EXCERPT)
Act 169 of 1975

400.293 Conduct constituting misdemeanor; penalty; presumption; civil action; prosecution.

Sec. 23. (1) A person that does any of the following is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$5,000.00, or both, for each violation:

(a) Knowingly misrepresents or misleads any person in any manner to believe that a person on whose behalf a solicitation effort is conducted is a charitable organization or that the proceeds of a solicitation effort are for charitable purposes.

(b) Knowingly diverts or misdirects contributions to a purpose or organization other than for which the funds were contributed or solicited.

(c) Knowingly misrepresents that funds solicited or contributed will be used for a specific charitable purpose.

(d) Knowingly misrepresents that a donor will receive special benefits or treatment or that failure to make a contribution will result in unfavorable treatment.

(e) Employs any device, scheme, or artifice to defraud or obtain money or property from a person by means of a false, deceptive, or misleading pretense, representation, or promise.

(f) Knowingly fails to file any materials, information, or report required under this act.

(g) Engages in any of the following practices and wrongfully obtains more than \$1,000.00 and less than \$5,000.00, in the aggregate, as a result of the practice or practices:

(i) Knowingly misrepresents that a person soliciting contributions or other funds for a charitable organization has a sponsorship, approval, status, affiliation, or other connection with a charitable organization or charitable purpose that the person does not have.

(ii) Knowingly uses a name, symbol, or statement so closely related or similar to a name, symbol, or statement used by another charitable organization or governmental agency that use of that name, symbol, or statement is confusing or misleading.

(iii) Knowingly uses a bogus, fictitious, or nonexistent organization, address, or telephone number in any solicitation.

(iv) Knowingly misrepresents or misleads any person in any manner to believe that a person or governmental agency sponsors, endorses, or approves a solicitation effort if that person or agency has not given written consent to the use of the person's or agency's name for that purpose.

(v) Knowingly misrepresents that the amount or percentage of a contribution that a charitable organization will receive for a charitable program after costs of solicitation are paid is greater than the amount or percentage of the contribution the charitable organization will actually receive.

(vi) Knowingly solicits contributions, conducts a charitable sales promotion, or otherwise operates in this state as a charitable organization or professional fund raiser unless the information required under this act is filed with the attorney general as required under this act.

(vii) Aids, abets, or otherwise permits a person to solicit contributions or conduct a charitable sales promotion in this state unless the person soliciting contributions or conducting the charitable sales promotion has complied with the requirements of this act.

(viii) Knowingly solicits or receives a contribution, conducts a charitable sales promotion, or sells memberships in this state for or on behalf of any charitable organization subject to the provisions of this act that is not registered under this act.

(2) A person that does any of the following is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$20,000.00, or both, for each violation:

(a) Engages in any practice or practices described in subsection (1)(a), (b), (c), (d), or (e) if the amount of money fraudulently collected or wrongfully diverted from the charitable purpose for which the money was solicited exceeds, in the aggregate, \$1,000.00.

(b) Engages in any practice or practices described in subsection (1)(g) and wrongfully obtains more than \$5,000.00, in the aggregate, as a result of the practice or practices.

(c) Knowingly submits any of the following in materials or statements required under this act or requested by the attorney general:

(i) Any document or statement purporting to have been signed, certified, attested to, approved by, or endorsed by a person if the signature, certification, attestation, approval, or endorsement is not genuine or has not been given by that person.

(ii) Any document containing any materially false statement.

(3) For purposes of this section, a person is presumed to have committed a violation knowingly if the attorney general provided written notice identifying alleged violations to the person before the acts or

omissions in violation of subsection (1) or (2) occurred.

(4) In addition to pursuing a criminal action under this section, the attorney general may bring a civil action for damages or equitable relief to enforce the provisions of this act.

(5) This section does not limit or restrict prosecution under the general criminal statutes of this state.

History: 1975, Act 169, Imd. Eff. July 20, 1975;—Am. 1976, Act 368, Imd. Eff. Dec. 23, 1976;—Am. 2010, Act 377, Eff. Mar. 30, 2011.