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BROOKS MALEMORE  
ATTORNEY GENERAL & REPORTER  
C. HAYES COONEY  
CHIEF DEPUTY ATTORNEY GENERAL

ROBERT E. KENDRICK  
DEPUTY ATTORNEY GENERAL  
EVERETT H. FALK  
DEPUTY ATTORNEY GENERAL

State of Tennessee

OFFICE OF THE ATTORNEY GENERAL  
480 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37219

October 26, 1977

Mr. Clyde Howard, Manager  
The American National Red Cross  
Nashville-Davidson County Chapter  
321 - 22nd Avenue, North  
Nashville, Tennessee 37203

Dear Mr. Howard:

You have requested the opinion of this office concerning whether the American National Red Cross and its Tennessee Chapters are subject to the provisions of the Solicitation of Charitable Funds Act found at T.C.A. §§ 43-2201 et seq.

It is the opinion of this office that the American National Red Cross is an instrumentality of the United States and that it, and its Tennessee Chapters, are therefore not subject to the provisions of the Solicitation of Charitable Funds Act.

Congress chartered the present Red Cross in 1905, subjecting it to governmental supervision and to a regular financial audit by the Defense Department. 33 Stat. 599, as amended, 36 U.S.C. § 1 et seq. Its principal officer is appointed by the President, who also appoints seven (all government officers) of the remaining 49 Governors. 33 Stat. 601, as amended, 36 U.S.C. § 5. By statute and Executive Order, there devolved upon the Red Cross the right and the obligation to meet this Nation's commitments under various Geneva Conventions, to perform a wide variety of functions indispensable to United States' armed forces around the globe, and to assist the federal government in providing disaster assistance to the states in time of need. 33 Stat. 600, as amended, 36 U.S.C. § 3; 64 Stat. 1109, 42 U.S.C. §§ 1855 - 1855 g.

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Although its operations are financed primarily from voluntary private contributions, the Red Cross does receive substantial material assistance from the federal government. See e.g., 45 Stat. 66, as amended, 36 U.S.C. § 13. At numerous times throughout its existence, both the President and the Congress have recognized and acted in reliance upon the Red Cross' status virtually as an arm of the government. See generally, Sturges, The Legal Status of the Red Cross, 56 Mich. L. Rev. 1 (1957). The United States Supreme Court discussed the relationship of the Red Cross to the federal government in Department of Employment v. U.S., 385 U.S. 355, 87 S. Ct. 461, 17 L. Ed.2d 414 (1966) and concluded that it was an instrumentality of the United States.

In 1976, the Tennessee Legislature enacted the Solicitation of Charitable Funds Act, effective July 1, 1977. The Act provides a comprehensive scheme for regulating charitable organizations soliciting funds in this state. The provisions thereof pertinent to this inquiry are discussed below.

T.C.A. § 48-2204(a) provides in part:

"Every charitable organization which intends to solicit contributions within this state, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration statement with the Secretary of State, upon forms prescribed by him..."

T.C.A. § 48-2201(a) defines "charitable organization" as follows:

"'Charitable organization' means a group which is or holds itself out to be a benevolent, educational, voluntary, health, philanthropic, humane, patriotic, religious, or eleemosynary organization, or any person who solicits or obtains contributions solicited from the public for charitable purposes.

A chapter, branch, area, office, or similar affiliate or any person soliciting contributions within the state for a charitable

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organization which has its principal place of business outside the state, shall be a charitable organization for the purposes of this chapter."

Rule 1360-3-1-.03(1) of the Rules of the Secretary of State, Charitable Solicitations Division provides:

"Governmental Units. Any governmental or quasi-governmental agency which solicits contributions from the public shall be subject to the provisions of this Act unless otherwise exempt under the provisions of T.C.A. Section 48-2202."

T.C.A. § 48-2202 exempts only bona fide religious institutions, educational institutions, cooperative scholarship corporations regulated by Chapter 45 of Title 49, T.C.A., and charitable institutions which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of five thousand dollars during a calendar year. Because the Red Cross does not fall within the exemption provision, and in view of the breadth of the quoted statutory provisions and the explicit language of the above rule, it appears that the Red Cross would be subject to the provisions of the Act unless exempt due to the status as an instrumentality of the United States.

It is a corollary to the principle of supremacy of federal law over state law that the activities of the federal government are free from regulation by any state. Mayo v. U.S., 319 U.S. 441, 63 S. Ct. 1137, 87 L. Ed. 1504 (1943). The United States may perform its functions without conforming to the police regulation of the states. Arizona v. California, 283 U.S. 423, 51 S. Ct. 522, 75 L. Ed. 1154 (1931). A state may not enforce regulatory requirements over a federal instrumentality which give the state's agencies a virtual power of review over the federal determination that such instrumentality is qualified and entitled to perform certain functions, or which impose additional conditions on such performance. See

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Johnson v. Maryland, 254 U.S. 51, 41 S. Ct. 16, 65 L. Ed. 126 (1920); Leslie Miller, Inc. v. Arkansas, 352 U.S. 187, 77 S. Ct. 257, 1 L. Ed. 2d 231 (1956); Soerry v. Florida, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 425 (1963). If the Red Cross was found to be subject to the provisions of the Solicitation of Charitable Funds Act, the Secretary of State would have the power of review over the federal determination of the eligibility of the Red Cross to conduct its operations in Tennessee. Under the provisions of T.C.A. § 48-2203, the Secretary of State could entirely prevent the Red Cross from soliciting any funds within the state. T.C.A. §§ 48-2204 and 2213 would impose additional conditions upon the Red Cross in the conduct of its operations within the State. It is for these reasons that this office is of the opinion that neither the American National Red Cross nor its Tennessee Chapters are subject to the provisions of the Act.

In reaching the above conclusion, it has been kept in mind that two of the principle legislative objectives of the Act were to require charities to publicly account for contributions and expenditures and to prohibit fraud and deception in charitable solicitations. As previously indicated, the Red Cross is by statute subjected to an annual audit by the Defense Department. In addition, 18 U.S.C. § 917 provides that whoever falsely or fraudently holds himself out as a member or agent of the Red Cross for the purpose of soliciting money is subject to criminal penalties. Further, 18 U.S.C. § 706 provides a criminal penalty for anyone who wears or displays the sign of the Red Cross for the fraudulent purpose of inducing the belief that he is a member of or an agent for the Red Cross. Thus, it can be seen that Congress has dealt to some extent with the legislative objectives of the Act.

Sincerely,

*David S. Weed*

DAVID S. WEED  
Senior Assistant Attorney General

DSW/vpm