

Crowdfunding and VFW's Solicitation of Funds

Background

The Manual of Procedure, at Sections 214, 414, and 514, (MOP) retains the general rule that precludes traditional solicitation outside of immediate geographic boundaries. An exception was created to allow Posts, Districts, and Departments to engage in web-based solicitation (crowdfunding) provided it is temporary. This change was made in 2016 in response to numerous complaints by members describing the difficulties encountered in raising the necessary funds for Posts. The challenge in addressing these complaints was to balance the need to allow for web-based fundraising with the traditional restrictions on ensuring various entities fundraise within their respective geographic areas. The intent of the change was to expand the geographic areas for web-based fundraising while keeping in place the restrictions for traditional fundraising activities.

Rule

The MOP precludes web-based fundraising that is "repetitive or ongoing." That is, the need to engage in web-based fundraising should be in response to a temporary need. Once that need is addressed, the crowdfunding solicitation should be discontinued. The rationale behind this is that, with the growth of web-based fundraising platforms, Posts, Districts, and Departments were being disadvantaged in terms of competing with other non-VFW entities for funds. Under the current MOP, a Post can raise funds using a crowdfunding platform for a particular need, such as repairing the Post's roof or providing funds to assist an immediate need for an area veteran. Once that need is resolved, it is expected that the web-based solicitation would be removed (i.e., it is not ongoing).

Charitable Solicitation Laws

This is allowed as long as it does not violate applicable charitable solicitations laws. As with any fundraising activity, Posts, Districts, and Departments need to know the laws that regulate fundraising. The laws vary from state to state. In the majority of states, there are laws that require charitable nonprofits to register with the state before soliciting residents in their state. With crowdfunding, the regulations reach beyond the originating state and extend to the state in which funds are requested (which is world-wide with web-based fundraising). For example, an online crowdfunding event for a charity based in Florida that is viewed by the residents of New York could require charitable registration in New York. The failure to register can result in both civil and criminal penalties and, again, vary among the states. Potential penalties include state fines, requiring the nonprofit to return all solicited funds or ordering the nonprofit to cease soliciting donations within the state until registration is completed.

The "repetitive or ongoing" standard reflected in the MOP was derived from a group of state attorney's general and state charitable solicitation officials who recognized that the burdensome registration process would apply if the solicitation is ongoing or repetitive. This standard is viewed against various other factors to determine whether the state will enforce its charitable solicitation laws. In short, states generally will not pursue an action against a charity that engages in a temporary on-line fundraiser.

Other Considerations

That said, the Bylaws and MOP allow for it, with the caveat that state laws must be followed. In addition to an evaluation of the charitable solicitation laws, when deciding to use a fundraising platform website, a Posts, Districts, and Departments should research other issues, including:

- What fees will the website deduct from each contribution?
- Will the donors' information be provided?
- How will the website use a charity's donors' information? Is a privacy policy in place?
- When will contributions be deposited into a charity's bank account/mailed to the charity?
- What steps are being taken by the website to prevent solicitation fraud?
- What kind of accounting will the website provide to a charity?

Conclusion

Fundraising through web-based platforms (crowdfunding) is authorized under the Bylaws and Manual of Procedure. Crowdfunding can be a useful way for Posts, Districts, and Departments to raise funds, but those entities should be aware of potential associated legal risks. These risks were explained when the changes were made to the MOP. The decision to adopt the changes in 2016 indicates a willingness for these entities to accept the risks.