

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30214
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

January 26, 2017

*Sent via email
and US mail*

Lisa Weimhold, Legal Assistant
Copilevitz & Canter
310 West 20th Street, Suite 300
Kansas City, MO 64108

Re: The New Hope Foundation ("New Hope")
MICS 49565

Dear Ms. Weimhold:

**Notice of Intention to Deny Registration and
Opportunity to Request Informal Conference**

On July 20, 2016, we received the Renewal Solicitation Registration Form and supporting information submitted on behalf of the above organization under the Charitable Organizations and Solicitations Act, MCL 400.271 et seq. ("COSA"). **We intend to deny registration.**

COSA provides that the Attorney General shall register a charitable organization unless the organization has materially misrepresented or omitted information required or the organization has acted or is acting in violation of the act or rules. MCL 400.275.

We examined New Hope's registration to determine if it conforms to the requirements of COSA and the rules. For the reasons discussed below, we find that New Hope has materially misrepresented or omitted required information or has acted in violation of the act or rules. New Hope will be provided an opportunity to provide additional documentation and to show that it is in compliance with COSA.

Reasons for Denial

- I. Submitting financial statements not in accordance with generally accepted accounting principles.**

COSA states, in part, in section 3(2):

...To register, a charitable organization must include all of the following information about the charitable organization in the registration form:

* * *

(j) If the charitable organization received contributions in its immediately preceding tax year, as reported on the charitable organization's internal revenue service form 990, 990-EZ, 990-PF, or other 990-series return, in the amount of \$500,000.00 or more¹, financial statements prepared *according to generally accepted accounting principles* and audited by an independent certified public accountant.... MCL 400.273(2)(j) [emphasis added]

With its registration form, New Hope submitted its IRS Form 990 for the year ended September 30, 2015. This return reported contributions in excess of \$525,000; therefore, financial statements audited by an independent certified public accountant and in conformity with generally accepted accounting principles (GAAP) are required.

According to Part IX, line 26, of the Form 990, New Hope allocated joint costs of a combined educational and fundraising campaign to program services. GAAP in such situations is governed by the accounting standards codified by the Financial Accounting Standards Board (ACS), *Accounting for Costs of Activities that Include Fundraising*.²

The ACS requires that before allocation of these joint costs can be made, certain criteria must be met.³ Further, the allocation of such costs must be disclosed in the notes to the financial statements.⁴

New Hope's Form 990 and its audited financial statements are identical with respect to total expenses and amounts allocated to program services, management and general, and fundraising. But, although New Hopes' Form 990 states that the amount reported as program services includes joint costs allocations, its financial statements do not. Because its financial statements fail to disclose joint cost

¹ COSA specifies that this amount will increase by \$25,000 every 5 years. The current threshold is \$525,000.

² FASB ACS 958-720-45-28.

³ FASB ACS 958-720-45-29

⁴ FASB ACS 958-720-50-2

allocations, New Hope violated COSA by submitting audited financial statements that are not in accordance with GAAP.

II. Submitting financial statements and Form 990 that misrepresent New Hope's charitable activities.

COSA states in section 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:

(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.

The facts in Violation I are hereby incorporated.

The ACS requires that before allocation of joint costs can be made, the following three criteria must be met: purpose, audience, and content.⁵ Further, any allocation of joint costs must be reasonable.⁶

To meet the purpose criterion, the activity in which the joint costs were incurred must call for specific action by the audience that will help accomplish the entity's mission.⁷ New Hope claims that most of its program is public awareness to help the public and health professionals understand the benefits of hospice care. However, the ACS states:

Educating the audience about causes or motivating the audience to otherwise engage in specific activities that will educate them about causes is not a call for specific action by the audience that will help accomplish the NFP's mission. Such activities are considered in support of fundraising.⁸

New Hope's Form 990 for the year ended September 30, 2015, reports that it incurred joint costs of \$2,158,911 of which \$571,594, or 26.5%, were allocated to

⁵ FASB ACS 958-720-45-29

⁶ FASB ACS 958-720-45-54

⁷ FASB ACS 958-720-45-35

⁸ FASB ACS 958-720-55-5

program services. Because New Hope's "public awareness" only educates its audience about its cause, New Hope may not allocate joint costs. Additionally, even if the joint cost allocation were permitted, the allocation of 26.5% is not reasonable.

New Hope's Form 990 claims that it spent \$762,126 on its charitable program of which \$571,594, or exactly 75.0%, was achieved through the allocation of joint costs. Without its joint cost allocations, New Hope's charitable program spending would be \$190,532. By using unreasonable joint cost allocations, New Hope increased the amount it claimed it spent on its charitable activities by 300%.

New Hope violated COSA by submitting its Form 990 which misrepresents the amount of its charitable activities.

III. Diverting contributions to a purpose other than that for which the funds were contributed or solicited.

COSA states in section 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:

* * *

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

New Hope uses the assumed name The Hospice Support Fund. Solicitation materials used by New Hope in 2016 state:

"The Hospice Support Fund works nationally making sure all Americans can have the chance of a dignified and peaceful end of life with home hospice care."

"So please help us bring the blessing of home hospice care to all Americans by sending your gift or \$10 or more today."

"2017 [Local] Area Appeal"

These statements suggest to donors that New Hope is raising funds to help people in the local community obtain hospice care or to minimize the financial burden of hospice care. However, New Hope has no such program to bring the home hospice care to all Americans, or to ensure that all Americans have home hospice

care. New Hope's Form 990 for the year ended September 30, 2015 states that New Hope:

“...operates nationally to educate the public and health care professionals about the benefits of hospice care.”

The Form 990 says that New Hope's programs are:

- A certified nursing assistant program;
- A public education program to help physicians and other health care professionals and entities understand the benefits of palliative and hospice care;
- Grief support groups to provide assistance to grieving persons in a group setting;
- Public support announcements to inform the public about the benefits of hospice.

New Hope's solicitations mislead persons into believing that their donations will be used to actually help persons, including local persons, receive home hospice care. New Hope violated COSA by diverting funds to other programs and purposes.

IV. Representing funds will be used for a particular charitable purpose and not using the funds for the represented purpose.

COSA states in section 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:

* * *

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

The facts in Violation III are hereby incorporated.

New Hope violated COSA by representing that funds will be used to help all Americans, including those in the local community, obtain home hospice care but instead used solicited funds for its other programs—programs that neither fund hospice care nor reduce the financial burden of home hospice care.

V. Using a device, scheme, or artifice to obtain money by means of a false, deceptive, or misleading pretense or representation.

COSA states in section 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:

* * *

(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.

As referenced above, solicitation materials sent into Michigan communities during 2016 were localized to include and refer to the name of the community into which the solicitation was sent. For example, a solicitation sent to a person in Hillsdale, Michigan in late 2016 referred to itself as, "2017 Hillsdale Area Appeal." This pretense misleads persons into believing that contributions will be used to assist persons in their local communities.

New Hope violated COSA by using a deceptive and misleading pretense to obtain money.

Additional Information to Provide

As discussed later, New Hope will be provided an opportunity to request an informal conference and provide additional information to show that it is in compliance with COSA. If New Hope requests an informal conference, it must provide written responses to the above allegations at least 3 business days prior to the date of the scheduled informal conference. In addition, the following information and documentation must also be provided at least three days in advance of the informal conference. This documentation is necessary either to support New Hope's positions or, if we concur with New Hope's positions, so that we may process the registration:

1. With respect to New Hope's joint costs allocations:
 - a. Provide a schedule of the line items that comprise the \$2,158,911 in joint costs. For each item, show how much was allocated to program services and how much was allocated to fundraising.

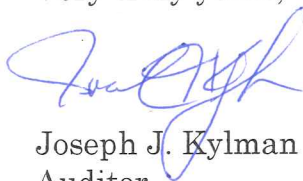
- b. Please explain what program service was conducted during solicitations.
 - c. What was the purpose of the joint activity?
 - d. What evidence did the auditor use or see that showed that the purpose of the activity was to further the mission of the organization?
 - e. What was the "call to action" requested of the audience in the solicitations?
 - f. Is the program, including the call to action, conducted on a similar scale using the same medium without the fund-raising appeal? If so, please provide details and samples of materials used in that program.
 - g. Describe how the audience was selected for campaigns in which costs were allocated to program services.
 - i. Provide names and descriptions of all donor lists acquired.
 - ii. Identify which lists include persons that previously made contributions to New Hope.
 - iii. Provide the name and address of the owner of each contact, or donor, list.
 - h. Provide samples of all solicitation materials used by New Hope during the fiscal year ended September 30, 2015, including all versions of telemarketing scripts, internet solicitations (web-based and email), invoices or any other fulfillment requests, letters, envelopes, brochures, pamphlets and all other printed material.
 - i. Explain in detail how the amount allocated to program services was determined. If the physical units method was employed, provide samples of soliciting materials that were used to determine the allocation. The materials should be marked to show which portions were determined to be program services, which were determined to be fundraising, and the calculation must be provided.
2. Provide samples of all solicitation materials currently being used but which were not included in the response to 1h above.
 3. We received no response to my letter dated July 29, 2016, a copy of which is enclosed. Please provide the information requested in the letter.

Lisa Weimhold, Legal Assistant
Copilevitz & Canter
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Request for Informal Conference

New Hope may request an informal conference. At the conference, New Hope may discuss the allegations with the Charitable Trust Section, challenge or rebut the allegations, and/or show that it is in compliance with COSA. New Hope must request the informal conference by email to me at kylmanj@michigan.gov by February 16, 2017. We will then contact you to schedule the informal conference. We must receive the additional information, listed above, at least three days in advance of the informal conference. If New Hope does not request a conference, its registration form will be denied.

Very truly yours,



Joseph J. Kylman
Auditor
Charitable Trust Section
(517) 373-1152
kylmanj@michigan.gov

JJK
Enc.

cc: Corporate Creations Network, Inc., resident agent