

BEFORE THE METROPOLITAN SERVICE DISTRICT COUNCIL

IN THE MATTER OF AN ORDINANCE)
REGULATING CHARITABLE)
SOLICITATION AMONG METROPOLITAN)
SERVICE DISTRICT EMPLOYEES)

ORDINANCE NO. 89-302A
Introduced by: Rena Cusma
Executive Officer

WHEREAS, The Metropolitan Service District has no formal policy regarding employee contributions to charitable organizations through payroll deductions; and

WHEREAS, Metro has historically allowed and encouraged the United Way to solicit charitable contributions among Metro employees;

THE METROPOLITAN SERVICE DISTRICT COUNCIL HEREBY ORDAINS:

Section 1. Charitable solicitations of Metro employees while on the job during working hours shall be conducted in compliance with this Ordinance. No other solicitations of Metro employees while on the job during working hours by a charitable organization shall be permitted.

Section 2. The Executive Officer with consultation of District employees shall by Executive Order establish rules and procedures to implement this Ordinance including procedures for applications, time and length of solicitation campaigns and payroll deductions. The procedures shall specify that all solicitations shall be made during a single campaign period lasting no longer than 30 days and that employees may sign payroll deduction cards for charitable donations only during a two week period following the end of the solicitation campaign period. The Executive Officer once each year shall certify all charitable organizations recognized by Metro for the purpose of conducting a fund drive among the employees of the District. The Executive Officer's action shall be based on the criteria stated in Section 3 of this Ordinance.

Section 3. Charitable organizations recognized to conduct a fund drive among Metro employees while on the job during working hours shall:

- a) Be a fund-raising organization which raised and distributed funds to ten or more charitable agencies.
- b) Disburse funds only to agencies whose charitable activities are primarily in the geographical areas of the Metropolitan Service District and which have an office located within the District.
- c) Be exempt from taxation under Internal Revenue Service Code Section 501 (c) (3).

- d) Be in compliance with the Charitable Trust and Corporation Act and the Oregon Solicitation Act (ORS 128.618 through 128.898). All charitable organizations who have made the required filings under such laws and have no enforcement action pending against them shall be presumed to be in compliance with such laws.
- e) Have a policy prohibiting discrimination in employment and fund distribution with regards to race, color, religion, national origin, handicap, age, sex, and sexual preference in the Charitable Organization and all its grantee agencies.
- f) Provide an audited annual financial report to the Metropolitan Service District for distribution to its employees 60 days prior to the charitable campaign.

Section 4. Payroll deductions for employee charitable contributions shall be allowed only for charitable organizations in compliance with this Ordinance.

ADOPTED by the Council, of the Metropolitan Service District this 28th day of September, 1989.

Mike Ragsdale
Mike Ragsdale, Presiding Officer

ATTEST:

Gwen Ware-Barrett
Clerk of the Council

I certify this Ordinance was not vetoed by the Executive Officer.

Gwen Ware-Barrett 11/1/89
Clerk of the Council Date

INTERNAL AFFAIRS COMMITTEE
REPORT

CONSIDERATION OF ORDINANCE NO. 89-302A ESTABLISHING AND REGULATING
CHARITABLE SOLICITATIONS AMONG DISTRICT EMPLOYEES

Date: September 18, 1989

Presented by: Councilor Hansen

COMMITTEE RECOMMENDATION: At the September 14, 1989 Committee meeting, the Committee voted 4 to 0 to recommend Council adoption of Ordinance No. 89-302A. Voting yes were Councilors Bauer, Hansen, Knowles and Ragsdale. Councilor Collier was excused.

COMMITTEE DISCUSSION/ISSUES: At its August 24, 1989 meeting and public hearing, the Committee heard from: John Leahy, Metro Personnel Officer, who explained the proposed Ordinance; Jim Shoemake, Metro employee, who supported the Ordinance; and Amina Anderson, Director of the Black United Fund, who supported the Ordinance and recommended several changes. The Committee also received a Council staff report which suggested several changes to the Ordinance (see Attachment 1 to this Committee Report). The Committee adopted several amendments on August 24th and directed staff to prepare a revised Ordinance for consideration at its September 14, 1989 meeting.

At its September 14th meeting, the Committee considered Ordinance No. 89-302A. It received a Council staff memo explaining the changes to the Ordinance made at the prior Committee meeting (see Attachment 2). The Committee received a verbal report from Council staff that indicated both Jim Shoemake and Amina Anderson were supportive of Ordinance No. 89-302A. Ms. Anderson suggested another minor change in Section (3)(a) of the Ordinance (inserting the words "and distributed to" after the word "raised") which the Committee made. The Committee heard from John Leahy who indicated that the Administration was supportive of the Ordinance as amended.

DEC:aeb
Attachment

A:\IACRPT.918



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: August 23, 1989

TO: Internal Affairs Committee

FROM: Donald E. Carlson, ^{DE} Council Administrator

RE: Ordinance No. 89-302 Regulating Charitable Solicitation
Among District Employees

The purpose of this Ordinance is to provide a formal system for regulating the solicitation of charitable contributions from District employees during working hours and to regulate the use of the District's payroll system for making contributions.

BACKGROUND

As indicated in the Administration's Staff Report, this Ordinance is a result of a request by the Black United Fund to be able to solicit funds similar to the practice of the United Way organization which, since the creation of Metro, has been conducting annual campaigns during working hours and receiving donations through the District's payroll deduction system. Attached as Exhibit A are two separate pieces of correspondence from the Black United Fund to District officials regarding this request.

Since introduction of Ordinance No. 89-302, the Council has received correspondence from the International Services Agencies (distributed to the Committee with the Agenda packet) expressing interest in changing the Ordinance to allow solicitations and payroll deductions for "over seas" charitable organizations.

The issue that this Ordinance addresses is not unique to Metro, but is one which other governmental units are in the process of addressing. Attached as Exhibit B is a memo from the Multnomah County Counsel to the Chair of the County Board which gives a legal analysis and opinion on the issue to the effect that charitable donations can be regulated by the governmental entity as long as there is a fair and rational basis for the regulation.

EXPLANATION OF AND QUESTIONS ON ORDINANCE NO. 89-302

The Ordinance does the following:

- o Section 1 of the Ordinance limits charitable solicitations during working hours to charitable organizations that are in compliance with the Ordinance.

- o Section 2 authorizes the Executive Officer annually to certify those charitable organizations recognized to conduct fund raising drives based on specified criteria. NOTE: The Ordinance indicates the criteria are in "Section 4", but actually they are listed in Section 3.
- o Section 3 lists the criteria which must be met by charitable organizations for certification by the Executive Officer. Included are:
 - a) a requirement that the organization raise funds for 5 or more charitable agencies. This criteria limits the field to those "umbrella" type organizations such as United Way which distribute funds to other charitable organizations.
 - b) a requirement that the charitable organization disburse funds to agencies whose activities are primarily within the boundaries of the District. This criteria would eliminate charitable organizations which distribute funds nationally or internationally.
 - c) a requirement that the charitable organization meet the IRS requirements to be exempt from taxation.
 - d) a requirement that the charitable organization be in compliance with State laws regulating charitable trusts.
 - e) a requirement that the organization and its grantee agencies have an anti-discrimination policy with regard to employment and fund distribution. A question arises how the anti-discrimination requirement for "fund distribution" would impact the Black United Fund.
 - f) a requirement that each charitable organization provide an audited financial report at least 60 days prior to the charitable campaign.
- o Section 4 limits the use of the payroll system for automatic deductions only for charitable organizations which are in compliance with this Ordinance.

The issue is important to the District because it sets limits on access to the organization for charitable campaigns. It appears that there are three important factors to consider:

1. Such an Ordinance will give an implied consent of the District or approval of the District to fund the activities of the organizations;

2. Such an Ordinance will enable organizations to solicit funds from employees during working hours which will involve some loss of productive time to the organization; and
3. Such an Ordinance will provide the use of the payroll system to facilitate the collection and transmission of funds to the charitable organizations at some cost to the District.

It appears the Council has the option to prohibit charitable organizations from soliciting funds from employees during working hours, but should do so through the adoption of an Ordinance. If the Council does not want to prohibit such activities, it appears advisable to adopt an Ordinance which restricts such activities so that there are limits on the time and energy spent by the District in supporting such activities. The Ordinance should set forth clear, objective, fair and reasonable criteria for determining which charitable organizations are eligible for soliciting funds during working hours and can use the payroll system for collection of contributions and the Ordinance should set forth rules and procedures for implementation or delegate that responsibility to some entity such as the Executive Officer.

Council staff suggests consideration of the following changes to Ordinance for Committee discussion:

1. In Section 2 insert additional language authorizing the Executive Officer to promulgate rules and procedures to implement this Ordinance, but limit the solicitation time to once a year for no longer than one month and limit the open enrollment period for employees to sign payroll deduction cards to no longer than 2 weeks after the campaign period.
2. In Section 3:
 - a) delete subsection (b) which is the criteria regarding where the money is spent. This would enable national or international groups to solicit contributions.
 - b) delete the phrase "and fund distribution" from subsection (e). This would remove the question regarding the ability of the Black United Fund to distribute money to agencies whose primary purpose is to serve the black community.



THE BLACK UNITED FUND OF OREGON

"The Helping Hand that is Your Own"

(503) 282-7973

P.O. Box 12406 Portland, OR 97212

(503) 282-3474

March 23, 1988

Mr. Ray Phelps
Dir., of Finance & Administration
2000 S.W. First Avenue
Portland, OR 97201-5398

RECEIVED
MAR 27 1989
METRO SERVICE DISTRICT
EXECUTIVE MANAGEMENT

Dear Mr. Phelps.

Mr. Amha Hazen and Ms. Joann Phillips of METRO suggested that I contact you regarding the Black United Fund of Oregon participating in METRO's annual charitable campaign, beginning this fall.

As you may already know, the Black United Fund of Oregon is a fundraising organization which raises money from individuals through payroll deduction plans established with government agencies, public institutions and private corporations.

Contributions made to the Black United Fund of Oregon go to support critically needed social services, economic development and self-help programs in the Black community.

The Black United Fund of Oregon currently participates in charitable campaigns at the State of Oregon, City of Portland, Multnomah County, Tri-Met, Portland Community College, IBM Corporation, Pacific Power and Light and during the Combined Federal Campaign.

Last year employees contributed \$120,000 to the Black United Fund of Oregon. We believe that this level of support clearly demonstrates that employees welcome choice in workplace giving and support the Black United Fund of Oregon's goal of community development through self-help.

I will would like to meet with you or your designee to discuss this matter further.

Sincerely,

Amina Anderson

Amina Anderson
Executive Director

Enclosures

**BLACK UNITED FUND OF OREGON
1989 BOARD OF DIRECTORS**

Chairman of the Board

Mr. Ben Priestley
Tenant Services Coordinator
Housing Authority of Portland
4307 N.E. 17th
Portland, OR 97211

Secretary

Ms. Joice Taylor
Secretary
Tubman Middle School
5705 N.E. 19th
Portland, OR 97211

Treasurer

Mr. Albert (Skip) Collier
CEO, Professional Training Systems
510 S.W. 3rd
Portland, OR 97204

Members

Ms. Bobbi Gary, Director	Black Women's Health Project	2642 S.E. Tibbetts Portland, OR 97202
Ms. Avel Gordly, Executive Secretary	American Friends Service Committee	2249 E. Burnside Portland, OR 97214
Mr. Ron Herndon, Director	Albina Ministerial Alliance Head Start Program	1425 N.E. Dekum Portland, OR 97211
Mr. Raleigh Lewis, Administrator	State of Oregon Civil Rights Division	2628 N.E. Ainsworth Portland, OR 97211
Ms. Marveita Redding, Executive Assistant to the Director	State of Oregon Dept of Agriculture	4061 N.E. 22nd Portland, OR 97211

Giving charities a boost

(Oregonian Editorial 6-29-88)

Employers who have assisted in charitable fund-raising among employees must make sure that workplace drives are fair and equitable.

For some, computerized payroll accounting has made much of the job easy.

Attention to how charitable contributions are raised in the work place comes as competition for charity dollars has grown intense because of tax law changes and cuts in government social service spending.

The greater need for funds and more aggressive, sophisticated campaigns for donors' dollars have actually added up to increased giving.

But competition must give reputable charities equal opportunity to make appeals and to benefit from the convenience of computerized payroll deductions.

In efforts that managers in private and public sectors should study, the Portland School District and the state of Oregon are hammering out plans to broaden charities' access to their employees.

Following an approach adopted in Washington state, the Oregon state government is developing a plan giving its more than 25,000 employees the option to contribute to numerous charities through payroll deduction.

Now United Way organizations, umbrella groups representing some 700 charities statewide, are the only choice for checkoff.

The school district's proposal would increase the number of charities that can solicit funds directly from the district's 6,500 full- and part-time employees. Direct presentations now are limited to United Way of the Columbia-Willamette, an umbrella for 106 local agencies.

The school district, which already has multiple charities listed for payroll deductions, is considering allowing groups, or federations, of related charities to meet with district employees to make appeals in October.

Vital to the success of the plan is the work of a proposed school district fund drive committee to screen groups by applying strict yet equitable standards. Equally important is the committee's monitoring of the charities' activities and finances.

With more charities getting higher visibility and more access, both the state government and the school district should see total giving increase. Since the state of Washington instituted similar changes three years ago, employee giving has jumped nearly 50 percent.

Broadening charity drives could bolster employee giving in Oregon as well.

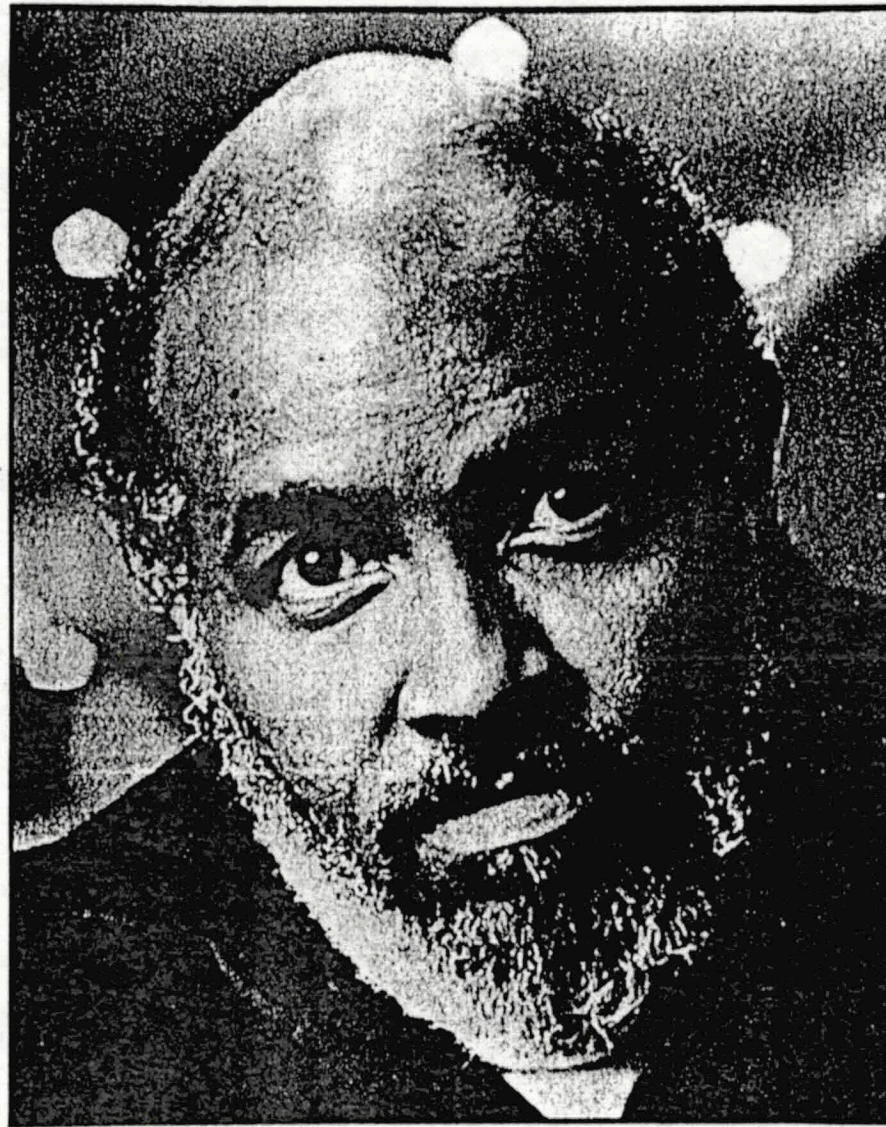
DePreist—BUF Campaign Chair

by Nyewusi Askari

Saying he believes in the goals and objectives of the Black United Fund, Mr. James DePreist, Conductor of the Oregon Symphony Orchestra, has agreed to become its Chairman during the Black United Fund's 1988 fundraising campaign.

Amina Anderson, Chairwoman of Oregon's Black United Fund, said Mr. DePreist's involvement is on-line with the Fund's goal of bringing in African-American personalities who are committed to helping bring about positive change in the African-American community.

She said the Fund's purpose is to help organizations that are active in the African-American community but don't receive funding to strengthen or continue their programs. "Basically, we try to fill the gap that is left by other workplace fundraisers and to focus on other community needs and priorities. In our community, those needs happen to be alternative education, arts and culture, social justice and legal services, job training and economic development. Those kinds of programs aren't addressed in our community by other groups. There was a study done in 1982 that said that less than a half of a percent of the monies that foundations give away in the State of Oregon goes to programs in the African-American community."



With affiliates in 16 states, the Black United Fund, in 1987, raised more than \$10 million.

Mr. DePreist, during an inter-

view with *The Portland Observer*, explained why he decided to assume the position of Black United Fund campaign chairman.

"All of my life, I have believed that if there are difficulties or problems within your scheme of things or a community, you have to take charge of your own destiny. And, as our communities and cities become more complex, it's very easy for there to be, even unintentionally, a trickle-down mentality. The persons in the communities at the lower end of the economic and social spectrum tend to be left out.

Then, there is the complaint, "Why aren't things better?" Well, you can either sit around and complain about things not being better, or you can set your own priorities and go about seeing that they get met. I believe that the Black United Fund goes from the inside out. It starts in the African-American community, identifies the needs, and identifies with those people who are doing the services. It's not a shortage of people who are willing to be involved in the self-help process, it's a matter of making other people in the community aware that they are there and that they need financial help."

Mr. DePreist said the cost of his being involved with the Black United Fund is far cheaper than putting up with the damage caused by the problem. "So, it's a natural kind of participation on my part. The Black United Fund is something we all should be involved in," he concluded.

Study criticizes giving patterns of foundations

By KATHIE DURBIN
of The Oregonian staff

Oregon's 35 largest private foundations have become isolated from the real needs of their communities and give only a pittance to programs to assist racial minorities, women and community-development projects, a study released Monday says.

The study, conducted by the 3-year-old Portland Committee for Responsive Philanthropy, found that 1 percent of the \$7 million disbursed by 35 general-purpose foundations in 1978 and 1979 had gone to programs assisting racial minorities, 1 percent to women's programs and less than 1 percent to agencies conducting "self-help" community-development projects to improve neighborhoods and create jobs.

The Portland group is affiliated with the National Committee for Responsive Philanthropy, which has challenged the giving patterns of United Way campaigns and private foundations nationally and locally.

The Portland group reported that more than half of the Oregon foundations' dollars went to 30 recipients, including 12 colleges, several cultural institutions and United Way campaigns.

"We see clearly that the needs of women and racial minorities are not being addressed by private foundations," said Scott Bailey, director of the research project. The report has been endorsed by 35 Portland-area organizations, many of them citizen activist and neighborhood groups.

Bailey blamed the giving patterns on a lack of economic diversity on foundations' boards of directors and a failure of most foundations to communicate with the public about public needs.

"Those two factors tend to isolate foundations from what's going on in the community," Bailey said.

Only two of the Oregon foundations that were surveyed reported having a member of a racial minority group on their boards of directors, and only one-fourth of the foundation trustees in Oregon were women, Bailey said. Forty-six percent of the 35 foundations surveyed had no women trustees, he added.

The study also found that while 55 percent of foundations surveyed said public knowledge of their programs was important, only 20 percent issued press releases publicizing their grants, and 20 percent compiled annual reports.

"Essentially, the communications system between foundations and the

public is the 'good old boy' system, where benefits are roughly proportional to being well-connected and from the right social background," the study said.

The study said half the money given by the 35 foundations went to 30 institutions, including 11 private and public colleges and the Oregon Independent Colleges Association. Top recipients of foundation grants were Willamette University, which received \$697,765 during the two-year period; United Way campaigns, \$687,067; and the Oregon Museum of Science and Industry, \$466,625.

Other major recipients were the Arts and Crafts Society of Oregon, \$393,592; the statewide YMCA, \$355,450; and the Oregon Graduate Center, \$350,026.

Only a few foundations — including the Oregon Community Foundation, the Northwest Area Foundation and the Weyerhaeuser Foundation — have tried to diversify decision-making and match charitable dollars with community needs, the study said.

Bailey said that when it is fully funded, the new Fred Meyer Charitable Trust will have a chance to be a leader in showing how community involvement can guide grant-making decisions.

Although the money distributed by foundations is private, he said, the fact that the foundations are tax-exempt means public involvement is warranted.

"The actual legal setup is a public trust," Bailey said. "In a sense, it isn't their money; they are just the trustees for the community."

Bailey said the committee hopes to persuade private foundations to give more money to innovative economic-development projects to help offset the effects of the recession. In addition, he said, foundations should make active attempts to add women and members of minority groups to their boards of directors and to solicit public comment and involvement in grant-making.

Information in the report was collected from the annual reports that private foundations must file with the state attorney general. A follow-up questionnaire was sent to the foundations surveyed; 20 responded, Bailey said.

He said the foundations were supplied with copies of the report in November but declined to make a formal response that could be included in the final report.

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THE BLACK UNITED FUND OF OREGON

"The Helping Hand that is Your Own"

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P.O. Box 12406 Portland, OR 97212

(503) 282-3474

April 11, 1989

Metro
Mr. John Leahy
Personnel Manager
2000 S.W. First Avenue
Portland, OR 97201

Dear Mr. Leahy:

Enclosed is the information you requested on litigation regarding a public employers legal responsibility to provide equal access to charitable solicitation.

Additional information can be obtained by a review of the

Black United Fund v. State of Oregon, Multnomah County Circuit Court

No. A8805-02620. Please call me or the Black United Fund's Attorney Ron

Fontana at 221-1792 if you require any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amina Anderson".

Amina Anderson
Executive Director

Judge backs 'access' for black charity

NEWARK (AP) — A federal judge yesterday gave the state 45 days to rewrite a law governing United Way charity drives among state workers, saying current regulations may violate the constitutional rights of a similar organization, the Black United Fund of New Jersey Inc.

U.S. District Judge H. Lee Sarokin issued a preliminary injunction against the state to prevent it from allowing the annual autumn United Way charity drive among state workers from continuing. But he stayed his decision in the lawsuit brought by

the 4-year-old Black United Fund for 45 days, saying he did not want to interrupt the current campaign.

He also said the state should have the time to remedy the flaws in its law.

Under the law, United Way volunteers visit state offices during a two-month period each year to solicit contributions. The law also authorizes payroll deductions to the United Way from the paychecks of employees who made pledges to the charity.

This year, the 33-year-old United Way expects to raise more than

\$500,000 from state employee contributions, the judge said.

In its suit, the Black United Fund asked for \$1 million in damages from the state for being denied access to state employees. It also said the state's policy cost the fund \$2 million in the past two years.

The state has interpreted the law to exclude all charities other than the United Way from access to state employees. But aides to Gov. Thomas H. Kean said legislation that would meet Sarokin's objections was expected to be passed within the 45-day

period.

In his 34-page opinion, Sarokin said the state's practice could exclude the Black United Fund from a forum for the exercise of its First Amendment rights and could violate the equal protection clause of the Fourteenth Amendment.

The law was flawed because it vests in one state official, the treasurer, discretion whether to make a particular paycheck deduction without setting any standards for the practice, the judge added.

STEENSON, FONTANA, SCHUMANN & ELLIS

ATTORNEYS AT LAW

415 N.W. 18TH AVENUE
PORTLAND, OREGON 97209
(503) 221-1792

TOM STEENSON
RONALD A. FONTANA

MICHAEL SCHUMANN
ALICE D. ELLIS

MEMORANDUM

TO: Mary Anderson, Director
Black United Fund of Oregon

FROM: Ronald A. Fontana

DATE: December 2, 1987

SUBJECT: Governmental body's obligation to provide equal
access to charitable funds

The basic rule regarding a governmental body's obligation to provide access to organizations to solicit charitable contributions is that the government has no obligation to provide any access to the workplace for the purpose of soliciting funds. However, once a governmental body has decided to provide access to one or more charitable groups, then it must provide equal access to similar groups on a similar basis. What the Oregon and the United States Constitutions prohibit is improper discrimination among groups, or regulations not narrowly drawn to serve a governmental and nondiscriminatory purpose. Once a governmental body has opened its doors and services to one charitable organization, it cannot deny access to others without having established standards or procedures by which another charity could be considered. Further, those standards and procedures must be carefully drawn to serve a proper governmental purpose and must be fairly applied. Standards that would discriminate against charities based upon the number of years they have been in existence or the size of the charity or the persons served by the charity would probably be found to violate equal protection or free speech provisions of the state or federal constitutions. Similarly, benefits which are provided to one charitable organization cannot be denied to another charity in the absence of established standards or procedures by which another charity could be considered for these benefits. Again, these standards and procedures must be narrowly drawn to serve a governmental interest and must be fairly and nondiscriminatorily applied.

The governmental body can properly decide that it wants to limit the number of charities which are involved in its charitable contribution campaign. The governmental body can properly limit participation in the campaign to funds which themselves distribute monies to other charities; however, it cannot simply choose one fund and grant it benefits which it denies to other funds.

Mary Anderson
December 2, 1987
Page 2

An excellent U.S. District Court opinion which discusses some of these issues and federal case law interpreting the U.S. Constitution is Black United Fund of New Jersey, Inc. v. Thomas H. Kean; a copy of that opinion is attached hereto.

Although that decision, of course, does not discuss the Oregon Constitution, the analysis under the Oregon Constitution would be similar and the result would be the same.

RAF:mvy
enc

State gives go-ahead to charity

State workers may donate to the Black United Fund, as well as the United Way, through a payroll deduction

By ROLLA J. CRICK
of The Oregonian staff

State employees could receive two pledge cards this fall for charitable contributions through payroll deductions, one for the United Way and one for Black United Fund of Oregon.

Amina Anderson, executive director of the Black United Fund of Oregon; Ronald A. Fontana, an attorney for the fund; and Kathleen Saadat, director of affirmative action for the state, told a news conference Wednesday in Portland that the state had agreed to allow the organization to participate in the annual charitable campaign, beginning Sept. 23.

James DePreist, conductor of the Oregon Symphony Orchestra, will be the chairman of the charity's fund-raising effort.

Anderson said she did not think there would be a significant effect on United Way giving, adding that in Los Angeles both a Black United Fund affiliate and a United Way campaign successfully side by side.

Dave Paradine, speaking for United Way of the Columbia-Willamette, said he tended to agree that there would be no serious impact on United Way giving. However, he added, "It is difficult to comment on just how we will be impacted until we know how their campaign will be conducted or what procedures will be used by the state for campaigning in the workplace."

Black United Fund of Oregon sued the state May 16, charging that its policy and refusal to allow solicitation of charitable contributions by the fund denied rights guaranteed in state and federal constitutions.

Fontana said once the attorney general's office decided the fund's constitutional rights had been violated, a way was sought to permit the fund to solicit. The result is that it will be allowed the same rights as United Way.

The agreement between the state and Black United Fund also extends to state universities. The case also is considered precedent-setting for public employers in the state, and the fund expects the city of Portland and Multnomah County to grant pending requests for soliciting payroll deduction contributions from their employees.

Saadat said the decision could open things up for solicitors. She said that could bring a stack of pledge cards to employees. To do so could mean finding a more manageable system of soliciting pledges.

Anderson said she expected a good September-December campaign, but no monetary goal has been set. Last year, the Black United Fund raised \$14,000 in Oregon. She said she anticipated more this year. "It encourages people to exercise their rights as employees to give as they choose," she said.

Anderson also announced that Pacific Power & Light Co. had invited the Black United Fund to participate in its charitable campaign beginning this fall.

**MULTNOMAH COUNTY OREGON**

DEPARTMENT OF GENERAL SERVICES
COUNTY COUNSEL SECTION
1120 S.W. FIFTH AVENUE, SUITE 1400
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138

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PAUL G. MACKAY
MARK B. WILLIAMS

TO: Gladys McCoy, Chair
Board of County Commissioners (101/134)

FROM: Larry Kressel *LK*
County Counsel

DATE: June 14, 1988

RE: Access to County Payroll System by
Charitable Organizations

The Problem

The Chair's office has been approached by several nonprofit organizations wishing to solicit contributions among county employees. You have asked my advice as to the legal principles governing the County's ability to regulate such solicitations.

The present county system of controlling access by fund-raising groups is informal. That is, the county has no written rules or criteria governing solicitation campaigns. For many years this was not problematic because United Way conducted the sole campaign. The picture may be changing, however. I believe that representatives of one other nonprofit organization have been advised that voluntary employee payroll deductions would be allowed if requests therefore were made by at least ten county employees. The same group has filed suit against the state charging that its exclusion from the state program for charitable contributions by employees is unlawful.

Assuming that several charitable groups have requested or will request access to our payroll system for fund raising purposes, the prudent County response would be to formalize the rules and criteria governing access. Continuation of a purely informal system will increase the risk of confusion and perceptions of unequal treatment of organizations seeking access. Legal problems could be expected.

The remainder of this memo addresses the constitutional law principles that should guide the County in developing rules. Our research shows no specific statutes or other laws that would apply.

1. Federal Constitutional Law: First Amendment

Charitable solicitation of funds has been recognized by the U.S. Supreme Court as a form of protected speech. Village of Schaumburg v. Citizens for a Better Environment, 44 U.S. 620 (1980). The degree of First Amendment protection varies, however, depending on the forum selected by the solicitor/speaker. Perry Education Assn. v. Perry Local Educator's Assn, 460 U.S. at 37, 45 (1983). A traditionally public forum, such as a public park, receives extensive First Amendment protection against governmental regulation. Speakers can only be excluded when exclusion is necessary to serve a "compelling state interest" and the exclusion is "narrowly drawn" to achieve that interest. Id.

On the other hand, a nonpublic forum, such as the typical workplace, does not receive such extensive constitutional protection. In addition to regulations over the time, place and manner of speech, the state may reserve the nonpublic forum for its intended purposes, ". . . so long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." Id. at 46.

Several recent cases illustrate these points. In the Perry case, for example, access to an inter-school mail system was granted to the exclusive bargaining representative (the PEA) for the school district's teachers. A rival union (the PLEA) sued when it was denied access to the mail system.

The Supreme Court characterized the mail facilities as a nonpublic forum. The Court then found the access limitation was reasonable in light of the purpose of the forum (mail system). In reaching this conclusion, the Court noted these points: (1) it was reasonable to give access to the PEA, as the exclusive bargaining representative, because of its special responsibilities to district teachers, (2) exclusion of a rival union was a valid means of preventing the schools from becoming "a battlefield for inter-union squabbles", and (3) the PLEA had adequate alternative channels for communicating with teachers.

The Supreme Court reached a similar result in Cornelius v. NAACP Legal Defense Fund, 473 US 788 ((1984). The case

Gladys McCoy, Chair
June 7, 1988
Page 3

involved the "Combined Federal Campaign" (CFC), a charity drive aimed at federal employees. By Federal regulation, the CFC was limited to voluntary, non-profit charitable agencies that provided direct health and welfare services. Legal defense and political advocacy organizations were specifically excluded from the CFC.

In response to a challenge by the NAACP and other legal defense funds, the Court upheld the exclusion. As in Perry, supra, the Court characterized the CFC as a nonpublic forum and concluded that the government's justifications for the limitation were reasonable in light of the purpose served by the CFC. The Court accepted these points: (1) funds supporting direct services to the needy could be seen by the government-employer as more beneficial than funds spent on litigation, (2) as in the Perry case, the government could validly exclude advocacy groups from the CFC in order to avoid disruption in the workplace, and (3) the record supported the inference that participation in the CFC by advocacy groups jeopardized the success of the campaign.

It is worth noting that these justifications would not suffice if the government's restriction was shown to be an attempt to suppress unpopular viewpoints. The plaintiffs in Cornelius raised this possibility by showing that the CFC had been opened to some nondirect service groups, such as the World Wildlife Fund, the Wilderness Society and the U.S. Olympic Committee.

The holding in Cornelius was applied by the Eighth Circuit Court of Appeals in United Black Community Fund Inc. v. City of St. Louis, Missouri, 800 F.2d 758 (8th Cir. 1986). There, the court upheld a city regulation limiting the payroll deduction process to charitable organizations whose administrative and fund raising expenses did not exceed 25% of gross contributions. The court stated that the regulation was reasonable (and therefore valid under the First Amendment) because it limited the program to those organizations most certain of doing the most benefit to the needy.

2. State Constitutional Law: Article 1 §8

Our research discloses no Oregon cases construing the free speech guarantee in the State Constitution in the context of charitable solicitation campaigns. We believe the state courts would take an approach similar to the federal (forum analysis) cases. However, the state courts will strictly construe any regulation on charitable solicitation that distinguishes

Gladys McCoy, Chair
June 7, 1988
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between groups based on the content of their expression. See, e.g., Ackerley Communications Inc. v. Multnomah County, 72 Or.App. 617, 696 P.2d 1140 (1985).

3. Federal Constitutional Law: Equal Protection

Concerns under the Equal Protection clause of the 14th Amendment can be raised when the government denies access to some charitable organizations and allows access to others. However, the equal protection analysis would probably track the First Amendment analysis discussed above. In the Perry case (teacher union access to school mail system), the U.S. Supreme Court stated:

The Court of Appeals also held that the differential access provided the rival unions constituted impermissible content discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. We have rejected this contention when cast as a First Amendment argument, and it fares no better in equal protection garb. . . . The School District's policy need only rationally further a legitimate state purpose. That purpose is clearly found in the special responsibilities of an exclusive bargaining representative.

460 U.S. 37 at 54.

State Constitutional Law: Article 1 §20

The Oregon Constitutional provision that parallels the Equal Protection Clause is worded differently, but it is likely to be construed in accord with the federal cases. That is, a county policy regulating access to a solicitation campaign would probably be upheld if it has a rational foundation and is "content neutral", i.e., does not grant or deny access to the payroll system based on the viewpoint of the soliciting organization. Van Daam v. Hegstrom, 88 Or.App. 40, 43 ___ P.2d ___ (1987).

Policy Options

As stated, there are risks inherent in the current, informal policy on charitable solicitations. This office recommends that the county develop a formal, written policy.

Gladys McCoy, Chair
June 7, 1988
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The case law discussed above leaves ample room for many approaches. To assist in the exploration of these, I enclose a copy of a report by a King County, Washington committee that was charged with the duty of expanding county employee choices in the expenditure of charitable dollars. This is a good point of departure. Be warned, however, that the committee saw numerous problems in developing fair, workable guidelines.

Please circulate this memorandum as you deem appropriate.

l420R/dm
Enclosure

cc: Linda Alexander



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: September 13, 1989

TO: Internal Affairs Committee

FROM: Donald E. Carlson, ^{DE} Council Administrator

RE: Ordinance No. 89-302A for the Purpose of Regulating Charitable Solicitations from District Employees

Please find attached the draft of Ordinance No. 89-302A. The draft has been amended based on the Committee's public hearing and discussion on August 24, 1989.

This draft does the following:

1. In Section 2 it a) requires the Executive to establish rules and procedures to implement the Ordinance in consultation with District employees; b) it limits the solicitations to a single period during the year which may last no longer than 30 days and limits the signing of payroll deduction cards to a two week period after the campaign; and c) it corrects a typo which refers to the criteria in Section 3.
2. In Section 3 the criteria for recognizing charitable organizations which may solicit donations during working hours are changed as follows:
 - a) the "umbrella" limit is raised from 5 organizations to 10 organizations;
 - b) add a requirement that funds must be distributed to organizations which have a local presence (office) in the District.

This draft has been reviewed by John Leahy who indicated it complied with the Committee's direction based on his understanding. He had not discussed it with the Executive Officer at the writing of this report. Also, Council staff will send this draft to those persons who appeared at the prior hearing for their review before the next meeting.

DEC:aeb

A:\MEMO.913



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DEC:aeb

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METRO

Memorandum

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Date: October 2, 1989

To: Rena Cusma, Executive Officer

From: Gwen Ware-Barrett, ^{gpwb} Clerk of the Council

Regarding: TRANSMITTAL OF ORDINANCE NOS. 89-302A FOR
CONSIDERATION OF VETO

Attached for your consideration is a true copy of Ordinance No. 89-302A adopted by the Council on September 28, 1989.

If you wish to veto this ordinance, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, October 5, 1989. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time stated above, this ordinance will be considered finally adopted.

I, Ernette Thorley, received this memo and a true copy of Ordinance No. 89-302A from the Council Clerk on October 2, 1989.

Dated: 10-2-89

gpwb:pa
mem.ord