

Opinion No. 55-6316

November 9, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Frank Andrews, Attorney, Department of Public Welfare, P. O. Box 1391, Santa Fe, New Mexico

We have your letter of August 30 in which you requested an opinion from this office as to whether the American Red Cross is required to comply with the provisions of Chapter 249, Laws 1955. We note that the Red Cross claims exemption on the basis that it is a quasi-official agency of the Federal Government and not a private, voluntary organization.

Section 1 (a) of Chapter 249, Laws of 1955, defines the charitable organization as follows:

"Any benevolent, philanthropic, patriotic or eleemosynary person or one purporting to be such."

Section 1 (d) defines person as:

"Any individual, organization, group, association, partnership, corporation, or any combination of them."

Section 2 of Chapter 249 provides that such charitable organizations as are not exempt by Section 3 shall register.

Section 3 provides for the exemptions and reads as follows:

"CERTAIN PERSONS EXEMPTED. -- a. This act shall not apply to corporations organized under the religious corporations law, and other religious agencies and organizations, and charities, agencies and organizations operated, supervised, or controlled by or in connection with a religious organization.

b. The following persons shall not be required to register with the department:

1. Educational institutions when solicitation of contributions is confined to its student body and their families, alumni, faculty, and trustees.
2. Fraternal, patriotic, and social organizations, when solicitation of contributions is confined to its membership.

3. Persons requesting any contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary.

4. Any benevolent society or fraternal organization which is required to register and comply with the insurance laws of the state as administered by the insurance commissioner."

It is evident that the Red Cross does not come within any of the exemptions above set forth. It is equally evident that the Red Cross in the fund raising drives would come within the provisions of this law unless there is a prohibition against the state's power to regulate a corporation created by an act of Congress.

The American Red Cross was incorporated by Title 36, Chapter 1, Sections 1 to 17, inclusive, U.S. Code. The general rule concerning corporations created by Congress is stated in Fletcher, Cyclopaedia Corporation, Volume 17, Section 8291, at page 21, as follows:

"A corporation created by or under an act of congress is a creature of the federal government and in so far as it constitutes, or functions as, an agency of that government, is protected from interference or regulation by the legislatures of states in which it transacts its business, except to the extent that congress has subjected it to state control."

The real question is whether or not the Red Cross is an agency of the Federal Government. It is true that the purpose of furnishing aid to the sick and wounded of the armed forces in time of war would appear to make it an agency of the Federal Government created by virtue of certain treaties of which the United States is a party. However, certainly for some purposes it is not considered as a federal agency. See Section 17 (b), Title 36, Chapter 1, U.S. Code, where it is specifically provided that the employees of the Red Cross are not to be considered employees of the Federal Government. We note further that Section 17, Title 36, Chapter 1. U.S. Code, reads as follows:

"Whenever the President shall find the cooperation and use of the American National Red Cross with the Armed Forces to be necessary, he is authorized to accept the assistance tendered by the said Red Cross, and to employ the same under the Armed Forces . . ."

It would certainly appear from this section that Congress did not consider the Red Cross as an agency of the Federal Government. The Red Cross must first tender assistance and there must be acceptance of the tender by the President. It is difficult to see how there would be a necessity for a tender of assistance and acceptance of the tender of the same if this were a federal agency. If this were a federal agency, certainly this would be unnecessary.

We do not believe that the Red Cross is performing as a federal agency so as to prevent the State of New Mexico from requiring it to register and comply with the provisions of Chapter 249, Laws 1955.

We would also point out that even if the Red Cross be considered a federal agency, we feel that Chapter 249, Laws 1955 is not such an act as would be prohibited. Section 8397, Fletcher, Cyclopaedia Corporation, Volume 17, page 268, reads as follows:

"The doctrine which exempts the instrumentalities of the federal government from the influence of state legislation is not founded on any express provision of the constitution, but on the implied necessity for the use of such instruments of the federal government. It is limited, therefore, by the principle that state legislation, which does not impair the usefulness or capabilities of such instruments to serve the federal government, is not within the prohibition."

It is difficult to see how the requirement of Chapter 249, Laws 1955, for fund raising drives, could impair the operation of the Red Cross. Certainly there is no attempt to prohibit or restrict the operation of the Red Cross within the State of New Mexico.

For the reasons herein stated we are of the opinion that the Red Cross must comply with the provisions of Chapter 249, Laws 1955.

We are of the opinion that only the State Organizations would have to register and not each local chapter.

Trusting we have answered your questions, we remain

By Paul L. Billhymer

Assistant Attorney General