

Ala. Code 1975, § 13A-9-74

Theft of Property by Charitable Fraud in the Second Degree

The defendant is charged with theft of property by charitable fraud in the second degree.

A person commits the crime of theft of property by charitable fraud in the second degree if, he/she is a professional fund raiser or solicitor and knowingly represents that he/she is soliciting funds for a charitable organization without that charitable organization's consent and receives contributions which are not delivered to the charitable organization either within 30 days after receipt or within 10 days upon request therefor by the charitable organization, whichever is sooner, and the property exceeds \$500 in value but does not exceed \$2,500 in value.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant was a professional fund raiser or solicitor;
- (2) The Defendant represented that he/she was soliciting funds for a charitable organization and did so without the charitable organization's consent;
- (3) The Defendant received contributions which were not delivered to the charitable organization either within 30 days after receipt or within 10 days upon request therefor by the charitable organization, whichever is sooner;
- (4) The property exceeded \$500 in value but did not exceed \$2,500 in value;
(AND)
- (5) The Defendant did so knowingly.

[Insert Theft of Property instructions as appropriate].

Professional fund raiser is any person who for compensation or other consideration plans, conducts, manages, or carries on any drive or campaign in this state for the purpose of soliciting contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself/herself out to persons in this state as independently engaged in the business of soliciting contributions for such purposes. A bona fide officer or employee of a charitable organization is not a professional fund raiser unless his/her salary or other compensation is computed on the basis of funds to be raised, or actually raised. This section shall not apply to persons who solicit political campaign contributions on behalf of candidates for public office or initiatives on a ballot. [13A-9- 70 (9)]

Professional solicitor is any person who is employed or retained for compensation by a professional fund raiser to solicit contributions for charitable purposes in this state. [13A-9-70 (10)]

Person is any individual, organization, group, association, partnership, corporation, trust, or any combination of them. [13A-9-70)(7)]

Contribution is the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in the organization confers a bona fide right, privilege, professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority. Reference to the dollar amount of “contributions” means in the case of promises to pay, or payments for merchandise or rights of any other description, the value of the total amount promised to be paid for the merchandise or rights and not merely that portion of the purchase price to be applied to a charitable purpose. [13A-9-70(5)]

Charitable organization is any benevolent, philanthropic, or patriotic person, or one purporting to be such, consistent with the then-controlling definition provided in the Internal Revenue Code of the United States of America, which solicits and collects funds for charitable purposes and includes each local, county, or area division within this state of the charitable organization; provided the local, county, or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization. [13A-9-70(1)]

Charitable purpose is any charitable, benevolent, philanthropic, or patriotic purpose which is consistent with the then-controlling definition provided in the Internal Revenue Code of the United States of America. [13A-9-70(2)]

A person acts *knowingly* with respect to conduct or to a circumstance when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of theft of property by charitable fraud in the second degree, then you shall find the defendant guilty of theft of property by charitable fraud in the second degree.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of theft of property by charitable fraud in the second degree, then you cannot find the defendant guilty of theft of property by charitable fraud in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

[Approved 9-11-15.]