

Ala. Code 1975, § 13A-9-71(h)(3)

**Charitable Fraud
(Failing to Make Available Books & Records)**

The defendant is charged with charitable fraud.

A person commits the crime of charitable fraud if he/she acts as a professional fund raiser or commercial co-venturer and knowingly fails to keep the books and records of his/her activities while required to be registered and until at least 2 years have elapsed at the end of the effective period of the registration to which they relate in his/her office available for inspection and examination by the Attorney General or the duly authorized representative of the Attorney General.

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

- (1) The defendant acted as a professional fund raiser or commercial co-venturer;
- (2) The defendant failed to keep the books and records of his/her activities while required to be registered and until at least 2 years have elapsed at the end of the effective period of the registration to which they relate in his/her office available for inspection and examination by the Attorney General or the duly authorized representative of the Attorney General; **(AND)**
- (3) The defendant did so knowingly.

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)]

Commercial co-venturer is any person who for profit or other commercial consideration, conducts, promotes, underwrites, arranges, or sponsors a sale, performance, or event of any kind which is advertised, and which will benefit, to any extent, a charitable or religious organization. However, any such person who will benefit in good will only, is not a commercial co-venturer if the collection and distribution of the proceeds of the sale, performance, or event are supervised and controlled by the benefitting charitable or religious organization. [13A-9-70(4)]

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

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)]

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)]

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)]

Religious organization is any society, sect, persuasion, mission, church, parish, congregation, temple, convention, or association of any of the foregoing, diocese or presbytery, or other organization, whether or not incorporated, or any employee thereof, no part of the net earnings of which inures to the benefit of any private party or individual associated with such an organization and that otherwise qualifies as an exempt organization under Section 501(c)(3) of Title 26, United States Code, as amended. [13A-9-70(11)]

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 the offense of charitable fraud, then you shall find the defendant guilty of charitable fraud.

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

Use Notes

For a list of those persons not required to register with the Attorney General, see 13A-9-71(f), Ala. Code 1975.

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