

Ala. Code 1975, § 13A-9-71(o)

**Charitable Fraud
(Using Similar Name, Symbol, or Statement
of Charitable Organization or Governmental Agency)**

The defendant is charged with charitable fraud.

A person commits the crime of charitable fraud if he/she is a charitable organization or professional fund raiser soliciting contributions and knowingly uses a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

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

- (1) The defendant was a charitable organization or professional fund raiser soliciting contributions;
- (2) The defendant used a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency, **[Insert Name]**, that the use thereof would tend to confuse or mislead the public; **(AND)**
- (3) The Defendant did so knowingly.

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)]

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)]

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)]

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

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)]

A person shall be deemed to have used the name of a charitable organization for the purpose of soliciting contributions if the latter charitable organization’s name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or his/her name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities. [13A-9-71(m)]

[Read as appropriate]: An officer, director, or trustee of the charitable organization by or for whom contributions are solicited may use the name. [13A-9-71(l)]

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.

[Approved 9-11-15.]