



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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AND JUST WHEN YOU THOUGHT NO ONE WAS WATCHING

Recent Issues With Veterans Charities

Most folks think that law enforcement officials look only for the “big fish” and ignore the sardines when it comes to prosecutions or other adversarial actions involving nonprofits. That is a myth! While it is true that the headline-grabbing cases often involve nationwide or even international charities, a fair amount of attention is devoted to tax-exempt organizations that operate at the local level. In this issue of the newsletter, we present some recent examples of federal and state enforcement against the “little guy.” While none of these cases involved a DAV department or chapter, they all reaffirm the need for constant vigilance to avoid placing yourself, your chapter or your department in the crosshairs of an aggressive prosecutor or revenue agent.

In Texas, the Attorney General filed a lawsuit against a veterans organization and four of its managers. The suit alleges that the group solicited contributions without complying with Texas law. In addition, the AG claims that the managers falsely told Texas residents that donations would provide housing to homeless veterans. Indeed, the suit further charges that the managers gained personal profits well beyond their legitimate salaries from the so-called “charitable programs.” This case yields three valuable reminders:

1. In many states, and even in some cities and counties, there are strict rules and regulations concerning “solicitation.” “Solicitation” is any request by a charity for money, whether in-person, by phone or mail. It is imperative that all departments and chapters take precautions to ensure that any fundraiser is in full compliance with applicable law.
2. Representations made to potential donors must be *substantially* true. In this case, donors were the victims of outright lying. However, in the case of *Madigan v. Telemarketing Associates*, which reached the Supreme Court of the United States, a fundraiser for a charity told potential donors that a big share of the donations would go to assist veterans. In fact, the telemarketer kept more than 90% of the donations! The Supreme Court found such solicitation statements to be fraudulent.
3. Excess or “side” payments to management employees are taboo in the charitable world.

In Florida, a lawyer was found guilty of running a lucrative gambling ring that used a veterans charity as a front. The lawyer is now serving a six-year prison sentence. This case reinforces an important point:



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The slightest hint of misconduct in charities that claim to benefit veterans, police or firefighters will attract law enforcement attention. The reason for this is obvious: these three classes of persons are particularly beloved by the American public because of the protective role that they play with respect to the population at large. Scam charities are particularly loathsome when they prey upon public affection for those groups.

In April, 2013, the Internal Revenue Service revoked the tax exemption of a veterans organization for substantial disregard of the laws applicable to such groups. The leaders of the organization authorized substantial payments to themselves in connection with unrelated businesses that they were operating. The same leaders had their personal expenses – right down to electric bills for their homes – paid for by the organization. Finally, although the entity was incorporated as a “membership organization” for veterans who had served during certain periods, the principals allowed anyone at all to join. This sad case also yields three valuable lessons:

1. **“Unrelated business” activities that are connected with a charity are a prime target for the IRS. The unrelated business does not even have to have a malicious or greed-based purpose. For example, for a 501(c)(4) organization, such as a DAV chapter, a**

bar/lounge operation has a high probability of being an unrelated business. In that situation, the chapter needs to be sure that the bar/lounge does not become its *primary* activity. If it does, loss of tax exemption becomes a distinct possibility.

2. As above, hidden personal benefits to top managers and officers are the death knell for a tax-exempt organization.
3. Membership organizations often enjoy tax exemptions and other legal benefits in whole or in part because of their membership restrictions. Ignoring those restrictions can create a host of legal problems. Some years ago, a DAV chapter had serious trouble with the authorities because its adjutant had welcomed his own non-veteran wife and six-year old child as DAV members with full participation and voting rights.

The above are just a few of many possible recent examples of law enforcement at the federal, state and local level cracking down on veteran-related organizations who break the law or – in some cases – just get careless about observing it. Make sure your department or chapter doesn’t become material for a news story!

Nonprofit Advisor is prepared by the Office of the DAV’s General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.