

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
SECURITIES AND CHARITIES DIVISION**

IN THE MATTER OF:)

TRANS WORLD RADIO)

) File Number C-10-0121
)
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)

**SUMMARY CEASE AND DESIST ORDER AND NOTICE OF INTENT TO IMPOSE
ADMINISTRATIVE PENALTY**

COMES NOW Melanie Thomas, Senior Attorney for the Securities and Charities Division of the Mississippi Office of the Secretary of State (“Division”), on behalf of Secretary of State C. Delbert Hosemann, Jr., and issues this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty against Respondent, Trans World Radio (“TWR”), for violating provisions of the Mississippi Charitable Solicitations Act (“Act”), Miss. Code Ann. Sections 79-11-501 *et seq.* In support thereof the Division respectfully submits as follows:

JURISDICTION

The Act gives authority to the Secretary of State to regulate “charitable organizations” that solicit donations in the State of Mississippi. TWR is a 501(c)(3) non-profit organization with the following stated purpose:

To assist the Church to fulfill the commandment of Jesus Christ to make disciples of all peoples by using and making available mass media to: proclaim the gospel of salvation to as many people as possible; to instruct believers in Biblical doctrine and daily Christ-like living; model our message through our corporate and cooperative relationships; vision to reach the world for Christ by mass media so that lasting fruit is produced.

TWR is using a charitable appeal as the basis for solicitation. For this reason, the entity falls within the Act’s definition of “charitable organization.” Although TWR’s charitable registration expired on November 30, 2009, TWR continues to solicit for donations in

Mississippi. Therefore, TWR is subject to the jurisdiction and the regulatory authority of the Secretary of State.

FINDINGS OF FACT

1. Trans World Radio (EIN # 22-1690564) is a 501(c)(3) organization located at 300 Grayson Drive, Cary, North Carolina 27511. TWR is not registered with the Division to conduct its affairs in the State of Mississippi. TWR may be served with this Summary Cease and Desist Order by serving Wesley I. Smith, Trans World Radio, Post Office Box 8700, Cary, NC 27512-8700.

2. In September of 2005, TWR sent a letter to the Division requesting that TWR be granted a religious exclusion from registration under the Act, pursuant to Miss. Code Ann. Section 79-11-501(a)(iii), and Mississippi Charitable Solicitations Act Rule 101(B). TWR asserted that it met the definition of bona fide religious institution as set forth in the Act and Rules; and, therefore, that it was not required to register as a charity in order to solicit for donations in Mississippi.

3. On November 4, 2005, the Division denied TWR's request for a religious exclusion. In doing so the Division specifically informed TWR that because it did not qualify for a religious exclusion, TWR could not solicit for donations in Mississippi unless it registered as a charity.

4. On November 30, 2007, TWR registered with the Division as a charitable organization. TWR renewed its registration on November 30, 2008, for a period of one year.

5. TWR's registration expired on November 30, 2009. Thereafter, TWR failed to renew its registration with the Division.

6. Although TWR did not renew its charitable registration with the Division on November 30, 2009, it did—on that same day—send a second request to the Division for a religious

exclusion. On February 10, 2010, the Division one again denied TWR's request for such exclusion. For a second time, the Division informed TWR that because it was not a bona fide religious institution, TWR was required to register as a charity before it could solicit for donations:

Please be advised, however, that TWR must register with the Division prior to soliciting funds from potential donors. A registration package is enclosed. Please complete the Form URS and mail to Kathy French at the above address.

7. On March 5, 2010, TWR submitted additional information in support of its request for a religious exclusion. By letter dated March 10, 2010, the Division again denied TWR's request.

8. Subsequently, TWR representatives met with the Division in person to argue the case for a religious exclusion. The Division, for the fourth time, informed TWR that it did not qualify for the religious exclusion under the Act. Yet again, the Division informed TWR that because it did not qualify for the religious exclusion from registration, TWR could not solicit unless it first registered as a charity.

9. On approximately September 13, 2010—nearly a year after TWR's charitable registration had expired—an employee of the Division received a bulk mail solicitation from TWR. The solicitation, in pertinent part, states as follows:

At TWR (formerly Trans World Radio), we've been broadcasting the gospel to the far reaches of the earth for more than 50 years. We transmit our *Seminary on the Air* and other Christian programming in a variety of languages in order to spread the gospel to the lost... and to help pastors and lay leaders teach new believers.

How can you help? [B]y helping us deliver more Radio Church Kits to these dedicated house-church pastors.

We can send one kit for \$75—a gift that will be tax deductible for you and will provide eternal benefits for your brothers and sisters in Christ as well. *And* a small portion of your gift will even help pay for precious airtime to broadcast the critical biblical teaching they will hear! Your gift of \$35 would also be greatly

appreciated, enabling us to provide one radio; and \$70 would be enough for two radios.

10. TWR is well-aware of the need to remain registered so long as it is soliciting for donations in Mississippi. This is not simply due to the fact that TWR has been previously registered and is, therefore, aware of the guidelines set forth in the Act and Rules. This is also due to the fact that TWR has been attempting to circumvent registration via a religious exclusion for five years. No less than four times during the past five years, the Division has informed TWR it does not qualify for a religious exclusion. The Division has repeatedly informed TWR that because it does not qualify for the exclusion, it cannot solicit unless registered as a charity.

11. Despite this knowledge, TWR never filed its renewal registration application with the Division. Despite this knowledge, TWR continued to solicit for charitable donations in Mississippi. TWR is currently—knowingly—operating as an unregistered charity in the State of Mississippi, asserting that donations to TWR will be used to provide radios and Bible to the Chinese people.

APPLICABLE LAW

Miss. Code Ann. Section 79-11-501(a)(i) defines a charitable organization as either of the following:

(A) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; or

(B) Any person actually or purporting to be established for any voluntary health and welfare, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations, or any person employing in any manner a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation and includes each local, county or area division within this state of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

Organizations which meet one of these definitions of “charitable organization” are not required to register in order to solicit, so long as they have first secured an exemption (pursuant to Miss. Code Ann. Section 79-11-505) or a religious exclusion (pursuant to Miss. Code Ann. Section 79-11-501(a)(iii) and Rule 101(B)) from registration. Charitable organizations which do not hold an exemption or religious exclusion are required to register prior to soliciting for donations.

Section 79-11-501(j) defines solicitation as the request for “money, credit, property, financial assistance or any other thing of value” on the representation that such item (or any portion thereof) “will be used for a charitable purpose or will benefit a charitable organization.”

Section 79-11-503(1) of the Act clearly states that, “prior to the solicitation of contributions, every charitable organization [...] which solicits or intends to solicit contributions [...] shall file a registration statement with, and pay a filing fee of Fifty Dollars (\$50.00) to, the Secretary of State.” Section 79-11-503(4) limits a registration period to one year.

Section 79-11-503(6) states:

In no event shall a registered charitable organization continue to solicit contributions in or from this state after the date such organization should have filed, but failed to file, a renewal and the financial report in accordance with the requirements of Sections 79-11-501 through 79-11-529.

TWR meets the definition of charitable organization as set forth in Miss. Code Ann. Section 79-11-501(a)(1)(A). As the Division has notified TWR many times, while TWR’s purposes may indeed have religious intents, TWR itself does not meet the definition of a bona fide religious institution pursuant to Mississippi law. At its core, TWR is a charitable radio station that broadcasts religious programming. TWR is aware it does not hold a religious exclusion under Mississippi law.

Nevertheless, between November 30, 2009, and the present date, TWR has solicited for contributions from Mississippi donors. Between November 30, 2009, and the present date, no effective registration statement for TWR was on file with the Division as required by the Act.

It is a violation of the Act for any person “to fail to comply with the requirements of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.” Miss. Code Ann. § 79-11-519(3)(g). Violations of the Act authorize the Secretary of State, at his discretion, to direct Respondent to cease and desist from further illegal activity, and to impose administrative penalties upon Respondent. Miss. Code Ann. § 79-11-509(4).

TWR’s conduct is in violation of the Act. TWR is currently soliciting for donations in Mississippi with undisputed knowledge of the following facts: a) it does not qualify for a religious exclusion under Mississippi law; b) therefore, it must be registered as a charity before it can solicit donations in Mississippi; c) it is not, in fact, registered as a charity.

TWR’s multiple attempts to avoid registration, via a religious exclusion, are clearly indicative of its knowledge that it cannot solicit unless registered. Nevertheless, TWR has ignored both the Division’s notice and the clear mandates of the Act.

CONCLUSIONS OF LAW

The previous paragraphs are incorporated herein by reference.

TWR is a charity as defined by Mss. Code Ann. Section 79-11-501(a)(1)(A).

TWR has violated the Act by soliciting Mississippians while unregistered. TWR’s actions are made more egregious by the fact that TWR knows it cannot solicit while unregistered, and that it does not qualify for a religious exclusion from registration. TWR’s actions indicate an intentional refusal to abide by Mississippi law.

NOTICE OF INTENDED ACTION

The previous paragraphs are incorporated herein by reference. As provided in Miss. Code Ann. Sections 79-11-509(1)(c) and (4), the Secretary of State intends to take the following action:

A. Order Respondent to Cease and Desist from further illegal activity in the State of Mississippi.

B. Impose an administrative penalty of up to Twenty-Five Thousand Dollars (\$25,000.00) for each offense against Respondent—with each solicitation to be considered a separate offense in a single proceeding—taken in violation of Miss. Code Ann. Sections 79-11-501 *et seq.*

This order shall remain in effect until further directive of the Secretary of State.

PUBLIC INTEREST

The actions taken and proposed to be taken herein by the Secretary of State are in the public interest and are consistent with the purposes set forth in Miss. Code Ann. Sections 79-11-501, *et seq.*

AMENDMENTS

The Division reserves the right to amend this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty.

RIGHT TO AN ADMINISTRATIVE HEARING

An administrative hearing may be requested in this matter. NOTICE is hereby given that Respondent has thirty (30) days from the date of receipt of this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty to provide written notice of their request for an administrative hearing to Melanie Thomas, Senior Attorney for Securities and Charities

Division, Office of the Secretary of State, Post Office Box 136, 700 North Street, Jackson, Mississippi 39205-0136.

If such hearing is requested, written notice of the date, time and place of such hearing, as well as a designation of the Hearing Officer, will be provided to all parties via certified mail, return receipt requested. Respondent may appear at the hearing with or without the assistance of counsel. Respondent will have the right to cross-examine witnesses and present testimony, evidence and argument relating to the matters contained herein. Upon request, subpoenas may be issued for the attendance of witnesses and for the production of books and papers on Respondent's behalf.

In the event such written notice for a hearing is not received within thirty (30) days, a FINAL CEASE AND DESIST ORDER AND ORDER IMPOSING ADMINISTRATIVE PENALTY may be entered in this proceeding without further notice.

ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED, pursuant to the authority set forth in Miss. Code Ann. Sections 79-11-501 *et seq.*, that Respondent shall immediately CEASE AND DESIST FROM ANY FURTHER ILLEGAL ACTIVITY IN, OR ORIGINATING FROM, the State of Mississippi in connection with solicitations of charitable contributions.

Respectfully submitted this the 4th day of January, 2011.

DELBERT HOSEMANN
Secretary of State
State of Mississippi

By:



MELANIE THOMAS
Senior Attorney
Securities and Charities Division

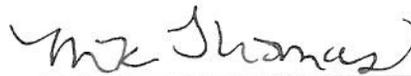
Melanie Thomas, MSB #101016
Mississippi Secretary of State's Office
P.O. Box 136
700 North Street
Jackson, MS 39205-0136
(601) 359-1650

CERTIFICATE OF SERVICE

I, Melanie Thomas, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document, via certified mail postage pre-paid, to the following:

Wesley I. Smith
Trans World Radio
Post Office Box 8700
Cary, NC 27512-8700

This the 4th day of January, 2011.



MELANIE THOMAS
Senior Attorney