

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 29, 2022

Opinion No. 22-06

Obligation of the American National Red Cross to File Disaster-Relief Financial Reports Under Tenn. Code Ann. § 48-101-521

Question

Must the American National Red Cross, which is “an instrumentality of the United States,” comply with the disaster-relief financial report filing requirements under Tenn. Code Ann. § 48-101-521?

Opinion

No. Because it is an instrumentality of the United States subject to federal reporting requirements, the American National Red Cross is not required to file disaster-relief financial reports under Tenn. Code Ann. § 48-101-521.

ANALYSIS

The American National Red Cross (“Red Cross”) is a congressionally chartered charitable corporation. *See* 36 U.S.C. §§ 300101 to -113. By statute, the Red Cross has “the right and the obligation,” among others, “to assist the Federal Government in providing disaster assistance to the States in time of need.” *Department of Employment v. United States*, 385 U.S. 355, 359 (1966); *see* 36 U.S.C. § 300102.

As a “[f]ederally chartered instrumentality of the United States,” 36 U.S.C. § 300101(a),¹ the Red Cross is subject to governmental supervision by the United States Department of Defense. It must submit a report to the Secretary of Defense on its activities during each fiscal year, “including a complete, itemized report of all receipts and expenditures.” 36 U.S.C. § 300110(a). The Secretary of Defense, in turn, must audit the report and then submit the audited report to Congress. *Id.* § 300110(b). The Red Cross has represented for purposes of this opinion that it does submit the required financial reports to the Department of Defense each year.

Tennessee’s Solicitation of Charitable Funds Act regulates charitable organizations that raise money in this State. *See* Tenn. Code Ann. §§ 48-101-501 to -521. Every “charitable organization” that intends to solicit charitable contributions in Tennessee must register with the

¹ With the passage of the American National Red Cross Governance Modernization Act of 2007, Congress formally declared the Red Cross to be a federal instrumentality. The United States Supreme Court had previously held “that the Red Cross is an instrumentality of the United States for purposes of immunity from state taxation levied on its operations, and that this immunity has not been waived by congressional enactment.” *Department of Employment*, 385 U.S. at 358-60.

Tennessee Secretary of State unless it is specifically exempted from registration. *Id.* §§ 48-101-502, -504.

As of 2007, the General Assembly did exempt the Red Cross from *registration* under the Act when it specifically exempted “[a]ny corporation established by an act of congress of the United States that is required by federal law to submit annual reports of its activities to congress containing itemized accounts of all receipts and expenditures after being fully audited by the department of defense.” *Id.* § 48-101-502(a)(7). The Red Cross is such an organization; there is no question that it is exempt from the *registration* requirements of the Act.

However, exemption from the *registration* requirements of the Act does not exempt a charitable organization from other provisions of the Act. *See id.* § 48-101-502(e) (“[e]xemption from the registration requirements of [the Act] shall not limit the applicability of other provisions [of the Act] to a charitable organization”). And one of those “other” provisions—namely Tenn. Code Ann. § 48-101-521—requires any “charitable organization” (other than a religious institution) that solicits and receives more than \$25,000 “for a charitable purpose related to a disaster in this state” to “file quarterly financial reports with the [Tennessee] secretary of state, . . . detailing the money raised and expended by the organization as a result of the solicitation.”

There is no question that the Red Cross is a “charitable organization”² and that it raises more than \$25,000 for disaster relief in Tennessee. Thus, even though it is exempt from having to register under the Act, the plain language of the Act appears to require it to file the quarterly disaster-relief financial reports called for in § 48-101-521. The question is, therefore, whether some other legal principle exempts the Red Cross from having to comply with § 48-101-521.

“It is a seminal principle of our law ‘that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them.’” *Hancock v. Train*, 426 U.S. 167, 178 (1976) (quoting *McCulloch v. Maryland*, 4 Wheat. 316, 426 (1819)). The general corollary to this principle is that “‘the activities of the Federal Government are free from regulation by any state.’” *Id.* (quoting *Mayo v. United States*, 319 U.S. 441, 445 (1943)). In short, unless Congress has authorized state regulation, federal instrumentalities, while operating within the limits of federal power, are generally not subject to control or regulation by the States.

Under this supremacy principle, the Red Cross is not required to comply with Tenn. Code Ann. § 48-101-521 because it is a federal instrumentality subject to oversight by the federal government, Congress has not authorized state regulation, and requiring the Red Cross to file quarterly disaster-relief financial reports would amount to impermissible state regulation of its operations.³

² “Charitable organization” is defined in the Act as “a group which is or holds itself out to be a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary organization, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety, or any person who solicits or obtains contributions solicited from the public for charitable purposes.” Tenn. Code Ann. § 48-101-501(1).

³ This conclusion is consistent with Tenn. Att’y Gen. Op. 77-369 (Oct. 26, 1977) in which this Office opined that the Red Cross was not subject to an earlier version of the Act because the Act would impermissibly impose additional conditions on the Red Cross—a federal instrumentality—in conducting its operations in Tennessee.

Under federal law, the Red Cross is required to make annual financial reports about its operations to the Secretary of Defense, “including a complete, itemized report of all receipts and expenditures.” 36 U.S.C. § 300110(a). Those reports are then audited by the Secretary of Defense and submitted to Congress; they are publicly available. *Id.* § 300110(b).

Requiring the Red Cross under state law to submit quarterly disaster-relief financial reports under § 48-101-521 would subject the Red Cross to a different, additional regulation. Having to comply with that additional state regulation would mean that the Red Cross could not conduct its “federal function” free from state regulation and control. *See Mayo*, 319 U.S. at 447; *see also Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 190 (1956) (immunity of federal instrumentalities includes immunity from state requirements of “qualifications in addition to those that the [federal] Government has pronounced sufficient”).

In sum, because it is an instrumentality of the United States subject to federal reporting requirements, the American Red Cross is not required to file-disaster relief financial reports under Tenn. Code Ann. § 48-101-521.⁴

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⁴ While the Red Cross is not subject to this filing requirement, the purpose of the filing requirement—transparency and public disclosure so that the organization’s disaster relief activities in Tennessee may be tracked—is nevertheless accomplished by the federal financial disclosures the Red Cross makes to Congress. And “while [t]he . . . Red Cross is and will remain a Federally chartered instrumentality of the United States, and it has the rights and obligations consistent with that status,” federal law “nevertheless” exhorts the Red Cross to “maintain appropriate communications with State regulators of charitable organizations and [to] cooperate with them as appropriate in specific matters as they arise from time to time.” Pub. L. No. 110-26, 121 Stat. 103, § 2(b)(4) (2007).