

2013 Columbia Law School Charities Regulation and Oversight Project Policy Conference on "The Future of State Charities Regulation"

The Role of State Charities Regulators in Protecting Public Trust in Charitable Responses to Disaster

*George Jepsen**

Nearly three months ago, on a clear and warm Friday morning, a brutal, unexplainable act of violence took the lives of 20 first graders and six teachers and administrators at the Sandy Hook Elementary School in Newtown. As shock turned to horror and grief across our state and the nation, people responded as they often do after disasters, with an outpouring of sympathy, support and donations of cash or other gifts.

On the day of the shootings, the Newtown Savings Bank set up a dedicated account with the local chapter of United Way. By the following Monday morning, \$1.2 million had been contributed to the United Way account, and that fund has since grown to \$9.5 million. We estimate that another \$4 million was contributed to other charities or funds established in response to the shootings, or in memory of its many victims.

In Connecticut, the Sandy Hook tragedy has taught us many lessons. One important lesson, learned by other states visited by tragedy or natural disasters, is that people are compassionate and they respond quickly and generously. In fact, the immediacy and volume of gifts that pour in from all over the world in the wake of a disaster can be overwhelming.

The Internet and social media provide instant access to disaster news, as well as a platform for an instant response. Charitable donations can be made with the click of a mouse or the touch of an icon. Government officials trying to deal with the disaster have little or no time to prepare for the deluge of disaster-response gifts. Even local chapters of national charities with disaster-response experience may be unprepared for the latest event or unable to respond quickly to the challenges raised by those gifts.

What are those challenges? Let me share a few examples. A local charity may have prepared a quick-response plan. But the limited purpose for which the charity was created may restrict the donations it can accept and distribute. Its limited purpose may not match the community's needs, or the most urgent needs that arise in the days, months or even years following a disaster. Another example is a charity that receives a high volume of gifts over a short period of time. It may not have the experience or the infrastructure in place to develop the protocols necessary to assess community needs, or to distribute gifts responsibly and within the framework of federal and state laws governing charity operations.

* Attorney General of Connecticut

The result in both cases is a delay in meeting the needs of those most hurt by the disaster. Both donors and the intended beneficiaries, often victims and their families, may become frustrated, suspicious and even angry. When that happens, public trust is undermined in the charitable sector and in government officials overseeing the responsible use of disaster donations.

On the Monday following Sandy Hook, the first call to my office was from United Way officials about the now widely publicized Newtown fund. They said they were turning away money collected by individuals and groups, unregistered as charities, because they did not know what representations had been made to the donors. The charity officials were concerned that by accepting the money, they could be running afoul of state charitable solicitation laws that require donated funds to be used only as intended by the donors.

I should not have been surprised that the second call that morning to my Office was from a reporter. Was my Office aware, he asked, that the Newtown Savings Bank was turning away deposits for the Newtown Fund? The Newtown High School cheerleaders had raised \$1,100 over the weekend selling handmade pins in honor of the victims. But when they tried to deposit the money, they were turned away. Other deposits were rejected as well.

Clearly this was a problem that needed a quick response. My Office reassured United Way officials that we would consider all such donations as intended "to provide support services to the Newtown/Sandy Hook community" -- the broad purpose for which United Way had established and promoted the Fund. This understanding would apply to donations received directly from a single donor, collected by an individual or group or raised from the proceeds of fundraising efforts. Our interpretation made sure the well-intentioned efforts of the Newtown High School cheerleaders, and countless others in the community, were appreciated. It also reassured the donors that the money would be accepted and used for appropriate charitable purposes in Newtown.

Those Monday morning wake-up calls pointed out the gaps in our disaster planning. From the charity receiving the bulk of the donations, to the nonprofit sector to government agencies, including my Office, there was no plan or infrastructure in place for efficient management of donations and fundraising. My hope is that a response plan will be among the public policy recommendations coming out of the statewide groups now reviewing what happened at Sandy Hook.

United Way of Western Connecticut has taken the lead in ensuring that state and community leaders have the opportunity to learn about the experiences of government officials and community leaders in other communities, such as New York City (9/11) and Colorado (Columbine High School and Aurora shootings), devastated by domestic terrorism tragedies. United Way, state and local officials, and community leaders are working together to apply the hard lessons learned from previous tragedies to guide the Newtown community through this difficult process. The process involves identifying the diverse needs of all those affected, while dealing with the personal grief and trauma pervasive in the community. Learning from others' experience is helping us to ensure that the millions of dollars in gift funds given to Newtown will be used effectively to meet the needs of the victims and the entire Newtown community.

Government can and should play a critical role in ensuring that charitable donations that follow disaster are collected, managed and dispersed in a balanced way. The job may fall to Attorneys General as the protector of charitable interests in the state. While Attorneys General

do not direct the activities of charitable organizations, their leadership is vital to ensure that all the needs of the community are met, while avoiding duplication and overlap in disbursement of gifts.

Following the 9/11 attacks in 2001, then-New York Attorney General Eliot Spitzer responded by bringing together a working group of staff, private-sector firms, and charitable organizations to address the charitable-donations challenge. The result of their efforts was a public database, developed and maintained with contributions by New York businesses. With the endorsement of the Attorney General, the database listed 200 charities, their purposes and the service they provided, as a public-information service to those seeking to help and to those needing assistance. This collaboration of public officials, private philanthropy and commercial interests was effective in maximizing benefit for those in need, and for the state. Following Hurricane Sandy last year, New York Attorney General Eric Schneiderman followed that successful precedent and sent a questionnaire to nearly 100 charities collecting donations for relief efforts. The responses, posted on the Attorney General's website and compiled into a report also available on the website, similarly informed the public of available gift funds and where those in need could seek assistance.

My thanks to Attorney General Schneiderman because the neighboring states of Connecticut and New Jersey, also affected by Hurricane Sandy, stand to benefit from the reporting he initiated and compiled.

Connecticut is a much smaller state than New York. The nonprofit sector and their professional advisors know each other, and many have worked often with my Office on charities matters. The larger charities and law firms call us when they have questions or suspect problems. Through these contacts and periodic communications with the major charities and individuals receiving gift funds from the public, my Office has been able to respond quickly to concerns and problems in the weeks since Sandy Hook. In addition, Connecticut Governor Dannel P. Malloy and Connecticut's recently retired U.S. Sen. Joseph Lieberman have worked closely with a transition team of Newtown and United Way officials to coordinate management of the donated charitable funds to ensure efficient and timely relief efforts for victims' families, first responders, and the Newtown community. Through their coordinated efforts, a new charity, the Newtown-Sandy Hook Community Foundation, Inc., has been established to determine appropriate distribution of the gift funds. In keeping with the transition team's recommendation that the local communities affected by the tragedy should determine the best use of the donated money, the officers and directors of the new charity are all members of the Newtown-Sandy Hook School community.

Connecticut, like 16 other states, has a bifurcated charities regulatory system. My office has primary responsibility for protection and enforcement of charitable interests. The Connecticut Department of Consumer Protection handles registrations under Solicitation of Charitable Funds laws. Consumer Protection Commissioner William Rubenstein and his staff have been proactive in identifying those who are soliciting funds for Sandy Hook or Newtown purposes – or who purport to be raising funds for that purpose. Commissioner Rubenstein, working closely with my office, has taken appropriate action on a case-by-case basis. He has made personal calls to Newtown residents trying to help to explain that registration is necessary to solicit funds. His Office has expedited registrations for Newtown fundraising when appropriate and investigated suspicious or unverified Internet or social-media solicitations. The federal Internal Revenue Service also has expedited review and approval of tax-exempt status for

new organizations in the Newtown area that have formed and raised funds in the wake of the school shootings.

Soon after the shootings, a Sandy Hook Elementary School parent whose children were in another classroom and escaped the shooting, began raising funds on everribbon.com, a fundraising facilitator site, for families of the 26 victims. Within days, he had raised more than \$400,000, and by mid-January, the total had grown to \$1 million. Commissioner Rubenstein, with staff from my office, drove to Newtown to meet personally with this well-intentioned young father to explain the need for registration and to assess his understanding of his fiduciary responsibilities in managing and distributing the funds. Because Connecticut is a small state, my Office and the Commissioner's were able to respond personally to make sure state laws were being followed and fiduciary responsibilities were met by a resident who only wanted to help his neighbors and friends. That young father is now working with counsel, who has offered his services pro bono, to ensure compliance with applicable laws. Because this young man's fundraising was solely for the 26 victims' families, and the donations were not solicited for or by a charity that is bound by tax-exempt rules, my Office was able to work with the Governor's Office to facilitate recent distributions of \$40,000 to each family from the everribbon fund. The money will help families meet their immediate needs, while protocols are being developed for needs assessment and disbursements from the Newtown gift fund established by United Way.¹

My Office is working with other state and federal officials to monitor gift management and distributions for Sandy Hook victims' families and the community. We are also taking swift action against those found to be soliciting under fraudulent representations and those who misappropriate funds solicited for Sandy Hook victims or the Newtown community.

With the immediate responses to Sandy Hook now in hand, we are beginning to look at collaborative disaster planning with the goal of more effective and coordinated response to receiving, managing and ensuring timely and appropriate distributions of gifts. Like New York, we have a precedent for such a collaborate approach. In August and October of 2011, devastating storms caused extensive damage across Connecticut, including power outages that continued for days. The local utility companies came under heavy criticism for delays clearing trees and restoring power. My Office pushed for measures to ensure the failed response of utility providers would not be repeated. We saw significant improvement in responsiveness following Hurricane Sandy. While the scope of damage in Connecticut as a result of Hurricane Sandy was significantly less than in New Jersey and New York, the harm to those homes, businesses and families that suffered damage was real and significant.

Likewise, following Sandy Hook, a key priority is to improve the community-wide or statewide planning for immediate response to management of disaster-response gifts and fundraising. We are working with the Governor's Office as it researches planning measures being used by other states to respond to disasters, and to assess whether those approaches will work in Connecticut. My Office will participate in a working group of charitable-sector leaders and elected officials brought together by the Connecticut Council for Philanthropy to begin a discussion about developing a comprehensive action plan to coordinate activities of charitable

¹ Working with counsel, this Fund, identified as the My Sandy Hook Family Fund, developed protocols reviewed by my Office, for offering equal distributions to each of the 26 victims' families by correspondence explaining that they may want to talk with the tax advisors about accepting the funds (likely taxable to each family), protocols for handling distributions to families with divorced parents who may dispute who should receive the funds, and protocols for distribution of any declined gifts to the other families.

organizations when disaster occurs. Working with other states, I have taken a leadership role toward developing unified electronic registration for charities nationwide. Electronic registration will make it easier for charities to comply with federal and state laws and will give the public greater and efficient access to records now warehoused in paper files or individual state databases. A nationwide database will create what New York accomplished on a smaller scale: an electronic public record of gifts and distributions. Every state will be able to access usable data collected at a single universally accessible site. By bringing this data into a usable electronic form, Attorneys General will exponentially increase their ability to identify and pursue fraud.

These inter- and intra-state collaborations are vital to effective protection of charitable assets and the integrity of disaster donations, especially at a time when a Facebook posting can go viral and create a global phenomenon. Again, it happened in Newtown. A young couple used money from savings to produce wristbands in honor of the Sandy Hook school victims. They were trying to create a symbol of unity for the community. They also hoped to raise money from voluntary donations for the wristbands to benefit those in need in Newtown. The wristbands, popular in Newtown, are now being worn all over the world as people respond with donations to the couple's posting on their Facebook page.

In such an environment, Attorneys General acting as protectors of disaster gifts cannot monitor every action and prevent waste and delay that erodes public confidence in charitable response to disasters. However, we can judiciously leverage our power to lead or facilitate collaborative efforts. Those efforts not only promote public interest in charitable gifts, but also encourage collaborative planning and management for use of disaster-related donations. Leadership and encouragement of collaboration is a valid and valuable role for state charities regulators and can effectively protect the public trust in charitable response to disasters.