

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



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December 6, 1990

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Mr. K. William Wiseman
The Humane Society of the United States
2100 L Street, N.W.
Washington, D.C. 20037

Dear Mr. Wiseman:

*In the Matter of the Proposed Investigation of the Humane Society of the United States
Before the California Department of Justice; Office of the Attorney General*

The Office of the Attorney General is charged with the general supervision of all organizations and individuals who obtain, hold or control property in trust for charitable and eleemosynary purposes in this state and organizations who solicit funds in this state. The Attorney General is authorized to enforce, in the name of the People of the State of California, the provisions of the Uniform Act for the Supervision of Trustees for Charitable Purposes (*Govt Code §12580 et seq.*), the Nonprofit Corporation Law (*Corps. Code §5000 et seq.*), the consumer protection laws (*Bus. & Prof. Code §17200 et seq.*), the charitable solicitation laws of this state (*Bus. & Prof. Code, §§17510 to 17510.7 et seq.* and the California Penal Code in connection with false and misleading advertising involving the solicitation of funds from citizens of this state (*Penal Code, 532(d)*).

We are aware that your organization has been active in the solicitation of funds in California and that it has an affiliate organization situated in Sacramento which owns real estate in this state. Moreover, we are informed that your organization held its annual meeting in San Francisco in late October 1990 and that one of your directors, Mr. J. Ramsey, is a resident of this state. Accordingly, it is the view of this office that your organization, although organized under the laws of the State of Delaware and has its principal place of business in Washington, D.C., nevertheless is subject to the substantive charitable trust laws of this state (*see, Allstate Ins. Co. v. Hague* (1981) 449 U.S. 302, 312-313) as they pertain to the duties and obligations of directors who hold assets for charitable purposes, as your organization does.

Information obtained by this office reveals that certain principals of the organization have

Mr. K. William Wiseman
December 6, 1990
Page 2

engaged in a course of conduct that, in our opinion, is a violation of fiduciary duties owed to the charitable beneficiaries of the Humane Society of the United States (HSUS), among them citizens of this state.

Information in our possession indicates the following:

- The senior officers of HSUS, Messrs. Hoyt and Irwin, received significant sums of money in the form of compensation some of which was never authorized by the Board of Directors;
- In May, 1987, HSUS purchased Mr. Hoyt's home for \$310,000 and leased it back to him rent-free, declaring the foregone rent to be additional compensation; W-2s were issued to Mr. Hoyt which reported to IRS a rental value of \$600/month.
- The Deferred Compensation Committee, whose legitimacy is in question, acted in excess of its authority in transferring certain life insurance policies to senior management and approving reimbursement to Mr. Irwin of some \$85,000 for funds he expended in improving a piece of property in Maine.

Faced with these allegations of misfeasance and breaches of fiduciary duty, we are advised that HSUS retained special counsel to examine these charges and make recommendations to correct these alleged abuses. Among the recommendations made by special counsel were the following:

- The office of the treasurer's authority and role should be defined by the Board of Directors;
- The chief counsel of the organization should be advised of all business matters between senior staff and the organization and/or members of the board of directors. In this way self-dealing transactions may be red-flagged for legal analysis;
- Chief counsel prepare a code of conduct for the staff and the Board and that it be strictly followed.

These recommendations, we understand, supplement a list of recommendations already adopted by HSUS. They were:

1. The compensation of the president and senior officers should be reported to the board in executive session as one -line budget item.
2. Errors and omissions insurance be obtained for directors and officer.

3. A compensation Committee is to be formed to:
 - a. Review the compensation of the president and recommend changes where appropriate;
 - b. Annually review the salaries of senior staff who report to the president and advise the president concerning those salaries;
 - c. Make salary recommendations to the president for all senior staff;
 - d. Negotiate written employment contracts between HSUS and the president and executive vice president and review by legal counsel.
4. No financial transactions should be permitted between staff members and board members.
5. All self-dealing transactions should be reviewed and acted upon by the entire board of directors consistent with Delaware law.
6. HSUS to pay for reasonable travel expenses incurred by spouses of the president and senior staff members if their participation is useful and significant to the HSUS, provided advanced written approval is obtained from the chairman of the board of directors.
7. Create two new committees with reporting responsibility to the board of directors—the Audit Committee and the Compensation Committee with specific duties and responsibilities to be established by the board.

In accordance with *Government Code §12588* we request that you provide us with any and all minutes of meetings, memoranda of meetings or tape recordings of meetings of the board of directors of HSUS at which the above-referenced corrective actions were discussed and acted upon. In addition, we request copies of all financial records of HSUS which show any reimbursements made by Messrs. Irwin and Hoyt to HSUS for improper receipt of funds.

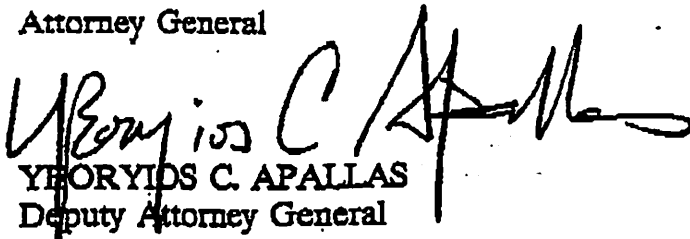
Mr. K. William Wiseman
December 6, 1990
Page 4

Please provide this information not later than December 20, 1990.

Thank you for your early attention to this request. If you have any questions regarding the contents of this letter please call me.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General


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Deputy Attorney General

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