



DAVE YOST

OHIO ATTORNEY GENERAL

Charitable Law Section
Office 614-466-3181
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May 23, 2023

Connected Progress
13730 Enterprise Avenue
Cleveland, Ohio 44135

Re: **Notice of Intent to Deny License and Opportunity for Hearing**

Members and Operatives:

Enclosed is a Notice of Intent to Deny License and Opportunity for Hearing. Please read it carefully as the information contained within concerns Connected Progress's bingo license application. Be advised if you would like to request a hearing on this matter, **you must do so within 30 days of the mailing of this Notice.**

Thank you for your time and attention to this matter.

Very respectfully yours,

DAVE YOST
Ohio Attorney General

A handwritten signature in blue ink, appearing to read "Dan W. Fausey".

Daniel W. Fausey
Section Chief
Ohio Attorney General's Office
Charitable Law Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-3181

Enclosures

Certified Mail No.: 70143490000079202031

**OHIO ATTORNEY GENERAL
CHARITABLE LAW SECTION**

May 23, 2023

IN THE MATTER OF:

Connected Progress
13730 Enterprise Avenue
Cleveland, Ohio 44135

EIN: 83-1513915
Bingo License No: N/A (Initial License Application)

NOTICE OF INTENT AND OPPORTUNITY FOR HEARING

INTRODUCTION AND JURISDICTION

Notice is hereby given that, pursuant to Ohio Revised Code (“O.R.C.”) Section 2915.08(F), the Attorney General intends to deny Connected Progress’s 2023 Charitable Bingo License application. In accordance with the provisions of O.R.C. Sections 119.06 and 119.07, you are hereby notified that you are entitled to a hearing.

Connected Progress is an Ohio non-profit corporation that received 501(c)(3) determination from the Internal Revenue Service. Connected Progress’s stated purpose is to, without limitation, “provid[e] free education to people who are looking for more out of life.” This includes educating people about “personal and professional topics[.]” and “donat[ing] to other charitable causes.”

Connected Progress applied for a license to conduct Type III Paper Instant Bingo pursuant to O.R.C. Chapter 2915 (the “Charitable Gaming Act”) in early 2023.

Connected Progress was designed to benefit its incorporator, Neil Sarcyk, and his related businesses. Mr. Sarcyk has significant influence over Connected Progress through interconnected and conflicted business relationships.

From its creation in 2018 and until July 2022, Mr. Sarcyk has served as the leader of the organization. Mr. Sarcyk owns SMAC Distributing, LLC (“SMAC”), which is a for-profit provider of bingo supplies to Connected Progress. Connected Progress and SMAC operate from the same principal address on property owned by owned by Mr. Sarcyk’s mother, Laura Sarcyk, that is also the headquarters for several businesses which Mr. Sarcyk owns or helps his family manage. Further, Mr. Sarcyk is acting with actual and apparent authority on behalf of Connected Progress: he has made multiple calls to the Attorney General’s Office inquiring about the status of Connected Progress’s bingo license application, and is a signer on Connected Progress’s bank account, even though he purports not to be a member of the organization anymore.

IN THE MATTER OF:

Connected Progress.

Page 2 of 7

Following Mr. Sarcyk's official departure in 2022, Joshua Bett assumed leadership for Connected Progress. Mr. Bett makes financial decisions for Connected Progress and also serves as bookkeeper for SMAC in addition to working full time for Sarcyk Management and Consulting, LLC ("Sarcyk Management"), a for-profit corporation owned by Mr. Sarcyk. None of Connected Progress' governing board or officers, aside from Mr. Bett, are actively engaged in conducting, director, or overseeing the affairs of Connected Progress. Mr. Bett makes decisions regarding the organization's financials, which has caused issues of conflicts of interest to arise.

Mr. Sarcyk has used his knowledge of the charitable sector to create Connected Progress as a shell charity, staff it with people over whom he exercises substantial influence, and will then leverage that influence to sell bingo tickets to Connected Progress for his own profit.

Connected Progress is not a "charitable organization" that qualifies for a bingo license.

Connected Progress does not function as a charity, but instead functions as middleman through which a loose group of people make small donations indirectly to bona fide charitable organizations.

Connected Progress has no online presence whatsoever to engage with the community, fundraise, or promote its own programming

Although Connected Progress received its 501(c)(3) status from the IRS in 2018, it has yet to conduct any substantive charitable programming or fundraising. Connected Progress claims to raise money by hosting infrequent events at bars, and advertises its events solely through word of mouth. Yet a review of Connected Progress's financial activity shows no revenue raised that is definitively from this source. Moreover, funds raised by this method are unaccounted for.

Most, if not all, of Connected Progress's fundraising is from its own members, former members, or Mr. Sarcyk's personal business. In its charitable bingo license application, Connected Progress provided receipts for eight one-time donations of \$500 each to eight charities over the last two years. Also during that time period, it has deposited a mere \$7,420 in its bank account.

Notice is hereby given that the Attorney General intends to refuse to grant Connected Progress's charitable bingo license for the following reasons:

COUNT 1

Failure to Qualify as a Charitable Organization

As part of its application materials for the license, Connected Progress is required to submit "[a] statement of [its] previous history, record, and association that is sufficient to establish that [it] is a charitable organization, and a copy of a determination letter that is issued by the [IRS] and states that the organization is tax exempt under subsection 501(a) and described in 501(c)(3) of the [IRC]." O.R.C. Section 2915.08(C)(4). The organization must also have existed as such for two years prior to filing its application for a bingo license to qualify for bingo license. O.R.C. 2915.08(C)(2). Finally, as part of its review, the Attorney General may require "[i]nformation and

IN THE MATTER OF:

Connected Progress.

Page 3 of 7

records establishing the charitable organization's organizational status, **qualification as a charitable organization**, qualification as a charitable organization as defined in division (H) of section 2915.01 of the Revised Code, **history of program services**, tax exempt status, [and] continued existence with the Ohio secretary of state..." O.A.C. 109:1-4-01(A) (Emphasis added).

As part of its application, Connected Progress submitted evidence of its activities over the last two years. It showed minimal activity, which consisted of: (1) approximately \$8,000.00 in verified charitable disbursements, (2) only four meetings during that timeframe, and (3) minimal charitable fundraising, almost all of which came from organization members or members of the Sarcyk family; and (4) no evidence of charitable programming

O.R.C. Section 2915.08(F)(2)(a) authorizes the Attorney General to refuse to grant a license to any organization that "fails or has failed at any time to meet any requirement of... sections 2915.07 to 2915.15 of the Revised Code[.]" Accordingly, the Attorney General intends to refuse to grant Connected Progress's bingo license for failure to meet the requirements set forth in O.R.C. Section 2915.08(C)(4).

COUNT 2

Improper Volunteering At or Compensation From a Distributor

Under O.A.C. 109:1-4-02(F), no key employee of a charitable organization "may serve as an employee or representative of, be compensated in any way by, or serve as a volunteer for, a distributor or manufacturer." A key employee is "a person that has the ability to control, or exercise significant influence over, the management, assets, or operating policies of a charitable organization or any manufacturer or distributor. Key employee includes, but is not limited to, officers, directors, [and] trustees..." O.A.C. 109:1-3-01(F).

Mr. Bett, as President, is a key employee of Connected Progress. Mr. Bett stated that he provided bookkeeping services to SMAC, Mr. Sarcyk's bingo distribution company. Even if done for free, such conduct would constitute volunteering his services to SMAC, which is not allowed.

Accordingly, the Attorney General intends to refuse to grant Connected Progress's bingo license for violating O.A.C. 109:1-3-01(F) pursuant to O.A.C. 109:1-4-04(A).

COUNT 3

Breach of Fiduciary Duties

Corporate officers and directors, and the trustees of a charitable trust, are subject to fiduciary duties. *See, e.g., Morris v. Mull*, 110 Ohio St. 623, 628 (1924); *Heaton v. Rohl*, 193 Ohio App.3d 770, 2011-Ohio-2090, ¶ 47 (11th Dist.); *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 589, 641 N.E.2d 265 (8th Dist. 1994); O.R.C. 109.23(A); O.R.C. 1716.17.

Fiduciary duty requires that the interest of the charity be placed above any personal interest and

IN THE MATTER OF:

Connected Progress.

Page 4 of 7

that a trustee act with the highest standard of integrity, scrupulous fairness, and honesty. *In re Binder's Estate*, 137 Ohio St. 26, 37-38, 27 N.E.2d 939, 947 (1940). As part of these duties, “[a] fiduciary of a charity has a duty to act in good faith with the care a person of ordinary prudence in a like position would exercise under similar circumstances.” Restat of the Law, Charitable Nonprofit Org TD. 1 § 2.03(a) (2013).

As Connected Progress’s directors and/or officers, Mr. Bett and Mr. Sarcyk are fiduciaries of Connected Progress. Additionally, Mr. Sarcyk still has a fiduciary relationship with Connected Progress by virtue of the fact that he is still a signatory on the organization’s account, as described more fully in Count 5.

Under O.R.C. Section 2915.08(F)(3), the Attorney General may refuse to grant a license to an organization if he “has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to, or committed theft or any other type of misconduct related to, the organization... for a period of not more than five years.” The Attorney General has good cause to believe Mr. Sarcyk and Mr. Bett have breached their fiduciary duties to Connected Progress.

Upon information and belief, Connected Progress held several small fundraisers at bars. Connected Progress set out a container whereby people could make cash donations. Mr. Sarcyk and Mr. Bett claimed to raise a few thousand dollars between 2021 and 2022 this way. Connected Progress’s bank accounts are not consistent with this claim, as cash donations total well below that and are not consistent with the dates Mr. Sarcyk and claimed that those fundraisers occurred.

Mr. Sarcyk and Mr. Bett failed to adhere to their duty of care, as a person of ordinary prudence would have promptly deposited any money raised into Connected Progress’s bank account. The cash deposits reflected in the account fall short of the amount Mr. Sarcyk claims he raised, and either Mr. Sarcyk and/or Mr. Bett failed to deposit any cash proceeds from any event held after May 21, 2021. Additionally, Mr. Sarcyk and Mr. Bett breached their duty to account by failing to produce records or to account for these funds upon request.

Accordingly, the Attorney General intends to refuse to grant Connected Progress’s bingo license for failure to meet the requirements set forth in O.R.C. 2915.08(F)(3).

COUNT 4 **Breach of Fiduciary Duties**

The description of the nature of fiduciary duties contained in Count 3 are incorporated herein as if fully restated. Additionally, a fiduciary owes a duty of loyalty to his organization. This duty requires the person to act in good faith, and has a “threshold requirement for a fiduciary... to both subjectively and reasonably ‘believe’ that the fiduciary is acting in the best interest of the charity.” Restat of the Law, Charitable Nonprofit Org TD. 1, comment b(1) (2013). As President, Mr. Bett is a fiduciary of Connected Progress.

Under O.R.C. Section 2915.08(F)(3), the Attorney General may refuse to grant a license to an

IN THE MATTER OF:

Connected Progress.

Page 5 of 7

organization if he “has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to, or committed theft or any other type of misconduct related to, the organization... for a period of not more than five years.” Additionally, Ohio Administrative Code (“O.A.C.”) Section 109:1-4-04(A) authorizes the Attorney General to “refuse to issue a license... on any ground deemed reasonable by the attorney general.” The Attorney General has good reason to believe Mr. Bett is currently and will continue to breach his fiduciary duties to Connected Progress.

Meeting minutes indicate Mr. Saryck did not disclose his conflict-of-interest to Connected Progress’s board when choosing which bingo distributor to use. Therefore, the decision to use Connected Progress constitutes an impermissible related party transaction.

Accordingly, the Attorney General intends to refuse to grant a bingo license pursuant to O.A.C. 109-1-4-04(A) on the grounds that Mr. Bett’s conduct in furthering Mr. Sarcyk’s scheme to profit off of Connected Progress would violate Mr. Bett’s fiduciary duty to Connected Progress. This would subvert the purposes for which the General Assembly enacted O.R.C. 2915.08(F)(3).

COUNT 5
Breach of Fiduciary Duties

The description of the nature of fiduciary duties contained in Count 3 are incorporated herein as if fully restated. Clint Zmija serves as Connected Progress’s Treasurer. As such, Mr. Zmija is a fiduciary of Connected Progress.

Under O.R.C. Section 2915.08(F)(3), the Attorney General may refuse to grant a license to an organization if he “has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to, or committed theft or any other type of misconduct related to, the organization... for a period of not more than five years.” The Attorney General has good cause to believe Mr. Zmija breached his fiduciary duties to Connected Progress.

Mr. Zmija has served as Connected Progress’s Treasurer since at least July 2, 2021. As Treasurer, his job duties include: make a report at each board meeting; chair the finance committee, assist in the preparation of the budget; help develop fundraising plans; and make financial information available to the board members and the public. Connected Progress Bylaws, Section 6.2(4). Mr. Sarcyk is still allegedly a signer on Connected Progress’s account as of February 2023.

Although he is the organization’s Treasurer, Mr. Zmija does not perform the duties required by the organization’s bylaws or other fiduciary duties required by Ohio law. He failed in his duty of care, including his duty to maintain accurate accounts, as (1) money is due but unaccounted for from organization fundraisers (see Count 3), and (2) Mr. Sarcyk was still a signer on Connected Progress’s bank account well after he ceased to be a board member/officer.

Accordingly, the Attorney General intends to refuse to grant Connected Progress’s bingo license for failure to meet the requirements set forth in O.R.C. 2915.08(F)(3).

LAWS AND RULES

Ohio Revised Code section 2915.08(F)(2) states “If any of the following applies to an organization, the attorney general may refuse to grant a license to the organization, may revoke or suspend the organization's license, or may place limits, restrictions, or probationary conditions on the organization's license for a limited or indefinite period, as determined by the attorney general:

- (a) The organization fails or has failed at any time to meet any requirement of section 109.26, 109.31, or 1716.02, or sections 2915.07 to 2915.15 of the Revised Code, or violates or has violated any provision of sections 2915.02 or 2915.07 to 2915.13 of the Revised Code or any rule adopted by the attorney general pursuant to this chapter.
- (b) The organization makes or has made an incorrect or false statement that is material to the granting of the license in an application filed under this section.
- (c) The organization submits or has submitted any incorrect or false information relating to an application if the information is material to the granting of the license.
- (d) The organization maintains or has maintained any incorrect or false information that is material to the granting of the license in the records required to be kept pursuant to section 2915.10 of the Revised Code, if applicable.
- (e) The attorney general has good cause to believe that the organization will not conduct bingo in accordance with sections 2915.07 to 2915.15 of the Revised Code or with any rule adopted by the attorney general pursuant to this chapter.”

Ohio Revised Code section 2915.08(F)(3) further states, “If the attorney general has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to, or committed theft or any other type of misconduct related to, the organization or any other charitable organization that has been issued a bingo license under this chapter, the attorney general may refuse to grant a license to the organization, may impose limits, restrictions, or probationary conditions on the license, or may revoke or suspend the organization's license for a period not to exceed five years.”

Finally, under O.R.C. 2915.08(F)(4), “The attorney general may impose a civil fine on an organization licensed or permitted under this chapter for failure to comply with any restrictions, limits, or probationary conditions on its license, and for failure to comply with this chapter or any rule adopted under this chapter, according to a schedule of fines that the attorney general shall adopt in accordance with Chapter 119. of the Revised Code.”

HEARING PROCEDURES

Pursuant to the Administrative Procedure Act, Ohio Revised Code Section 119.07, an Applicant who has been issued a Notice of Intent and Opportunity for Hearing may request a hearing before

IN THE MATTER OF:

Connected Progress.

Page 7 of 7

the Charitable Law Section of the Office of the Ohio Attorney General within thirty (30) days of the time of the mailing of the Notice. **The request for a hearing must be received by the Charitable Law Section of the Office of the Ohio Attorney General within thirty (30) days of the mailing of this Notice.**

The Applicant may appear in person, by his or her attorney, or by such other representative who is permitted to practice before the Ohio Attorney General's Office. The Applicant may present evidence and examine witnesses appearing for and against the Applicant or may present a position, argument and contentions in writing in lieu of appearing at the hearing. A hearing may be continued on motion of either the Attorney General or the Applicant, if the Attorney General so approves.

Failure to request a hearing within the time prescribed may result in the Attorney General issuing an adjudication order regarding the application without conducting a formal hearing in the matter.

Requests for a hearing upon the Notice of Intent and Opportunity for Hearing must be submitted to the undersigned at the address listed below.

Very respectfully yours,
DAVE YOST
ATTORNEY GENERAL



Daniel W. Fausey
Section Chief
Ohio Attorney General's Office
Charitable Law Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-3181

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