

COPY

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

LIVING CROSS AMBULANCE SERVICE, INC.,

Plaintiff-Appellant/Cross-Appellee,

vs.

No. 35,298

VALENCIA COUNTY REGIONAL  
EMERGENCY COMMUNICATIONS CENTER;  
VILLAGE OF LOS LUNAS,

COURT OF APPEALS OF NEW MEXICO  
FILED

NOV 10 2016

Defendant-Appellees/Cross-Appellant,



and

BOARD OF COUNTY COMMISSIONERS  
OF VALENCIA COUNTY,

Defendants.

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**ANSWER BRIEF OF DEFENDANT-APPELLEES VALENCIA COUNTY  
REGIONAL EMERGENCY COMMUNICATIONS CENTER  
AND VILLAGE OF LOS LUNAS**

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APPEAL FROM THE THIRTEENTH JUDICIAL DISTRICT COURT  
The Honorable James L. Sanchez  
Dist. Ct. No: D-1314-CV-2011-00512

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**STATEMENT OF COMPLIANCE**

Pursuant to Rule 12-213(G), undersigned counsel hereby certifies that this brief was prepared in fourteen-point, proportionally spaced typeface using Microsoft Word 2010, and that the body of the brief contains 5954 words.

**TABLE OF AUTHORITIES**

**Cases**

*Gem, Inc. v. Ky. Cent. Life Ins. Co.*, 1997-NMSC-052, 124 N.M. 186,  
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## SUMMARY OF PROCEEDINGS

### I. NATURE OF THE CASE

This case involves the proper interpretation and application of the Anti-Donation Clause of the New Mexico Constitution, N.M. Const. art. IX, § 14 (the “Anti-Donation Clause”). Plaintiff-Appellant Living Cross Ambulance Service, Inc. (“LCAS”) is a for profit corporation which provides ambulance services in the Valencia County Area. Appellee/Cross-Appellant Valencia County Regional Emergency Communications Center (the “VRECC”) is a governmental agency which was created in 2006 under the Joint Powers Agreements Act, NMSA 1978, §§ 11-1-1 to -7 (1961, as amended through 2009).

Since its creation, the VRECC provided LCAS with emergency dispatch services. The VRECC made a number of demands to LCAS to pay for these services. In 2008, the VRECC advised LCAS that it would discontinue services to LCAS and would instead directly route emergency calls to it unless LCAS entered into a contract with VRECC which provided for payment to VRECC based on LCAS’s proportionate utilization of emergency dispatch services.

LCAS then filed the action below seeking, *inter alia*, a declaration that the VRECC did not have the power to charge for dispatch services, and that the provision of these services was constitutional.

On cross motions for summary judgment, the district court ruled as a matter of law that (1) the Anti-Donation Clause of the New Mexico Constitution prohibits VRECC from providing emergency medical dispatch services to LCAS without receiving appropriate compensation and (2) that VRECC possesses the power to charge LCAS for the provision of emergency dispatch services. At issue in this appeal is whether the district court's determination was a correct statement of law.

## **II. SUMMARY OF RELEVANT FACTS**

LCAS is a private for-profit corporation certified as the emergency ambulance carrier for Valencia County by the New Mexico Public Regulation Commission ("PRC"). [RP 185 ¶¶ 3-4; 221]

VRECC was established in 2006 under a joint powers agreement between Defendant-Appellee/Cross Appellant Village of Los Lunas ("Los Lunas"), Defendant-Appellee Valencia County (the "County"), City of Belen, and the Village of Bosque to operate, administer, and maintain a centralized joint enhanced 911 communications system for Valencia County pursuant to the powers conferred upon local governing bodies by the New Mexico Enhanced 911 Act, NMSA 1978 §§ 63-9D-1 to - 20 (1989, as amended through 2005) ("E911 Act"). [RP 224-232; 334 ¶6] For purposes of this appeal Defendants-Appellees VRECC and Los Lunas will be referred to collectively as VRECC.

Under the E-911 Act, an "enhanced 911 system" is defined as:

[A] landline or wireless system consisting of network switching equipment, database, mapping and on-premises equipment that uses the single three-digit number 911 for reporting police, fire, medical or other emergency situations, thereby enabling a caller to reach a public safety answering point (“PSAP”) to report emergencies by dialing 911 and includes the capability to:

1. Selectively route incoming 911 calls to the appropriate public safety answering point operating in a 911 service area
2. Automatically display the name, address and telephone number of an incoming 911 call on a video monitor at the appropriate PSAP
3. Provide one or more access paths for communications between users at different geographic locations through a network system that may be designed for voice or data, or both, and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies; and
4. Relay to a designated PSAP a 911 caller’s number and base station or cell site location and the latitude and longitude of the 911 caller’s location in relation to the designated PSAP.

Section 63-9D-3(J). The E-911 Act further defines a PSAP as “a twenty–four-hour local communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency.” Section 63-9D-3(Q). Because a dispatcher is required to stay on each call, dispatching takes a significantly longer period of time and requires more resources than simple call routing. [RP 348 ¶ 21; 377 ¶21; 203 ¶ 16]

Since its formation in 2006, VRECC has been the designated PSAP for Valencia County. [RP 333 ¶ 6] VRECC also provides emergency dispatch services. [RP 333 ¶ 8; 346 ¶ 15] A portion of VRECC’s expenses are covered by the



Enhanced 911 Fund, Gross Receipts Tax, and federal grants and loans. [RP 340 ¶ 8] The remainder of operating costs are paid by the governmental entities that are members of the VRECC. [RP 341 ¶ 16; 346 ¶¶ 13, 14] Pursuant to the joint powers agreement, “the financial responsibility for the Municipalities and County to cover the costs of operating expenses shall be in proportion to the number of calls generated in their respective jurisdictions.” [RP 228 § IV(B)(1)]

Shortly after its formation in 2006, VRECC began efforts to contract with LCAS to collect payment for its ongoing provision of emergency dispatch services to LCAS. [RP 275] In 2008, when it became apparent that LCAS was unwilling to negotiate or enter into a contract, VRECC informed LCAS that it would cease providing dispatch services for LCAS unless the parties came to an agreement. [RP 275] No agreement was reached and LCAS has consistently disputed VRECC’s asserted right to charge for the provision of emergency dispatch services. [RP 192 ¶ 25] LCAS asserts that “the undisputed stated purpose of the dispatch fee was to allow VRECC to build up a reserve for the VRECC.” [BIC 11] LCAS cites to a statement in the minutes from a 911 Board Meeting regarding a question and discussion over where the funds from Living Cross and would go. [RP 272 ¶ 3] VRECC refutes that the citation demonstrates an “undisputed stated purpose” and disagrees with LCAS’s position. Instead, it is VRECC’s position that it would violate the

constitution to force municipal and county taxpayers to bear the significant expense of providing dispatch services to a private corporation such as LCAS.

#### **IV. COURSE OF PROCEEDINGS AND DISPOSITION BELOW**

On April 21, 2011, LCAS filed a complaint in district court requesting that the district court declare the rights and obligations of the parties with regard to VRECC's claim for fees for providing 911 emergency medical dispatch and permanently enjoin VRECC and the County from asserting that LCAS legally owed Defendants any fee based on Defendants' provision of emergency medical dispatch.

#### **[RP 1-26]**

LCAS moved for summary judgment on the legal issues of whether the Anti-Donation Clause prohibits the provision of 911 emergency medical dispatch services to LCAS without compensation and whether VRECC possesses governmental authority or power to impose a fee or charge for provision of 911 emergency medical dispatch services. **[RP 169-170]** In its motion for summary judgment, LCAS also asked the court to declare that LCAS owes no fee, charge, or other amount based on Defendants' provision of 911 emergency medical dispatch services to LCAS and that Defendants must provide 911 emergency medical dispatch services so long as LCAS is certified as an emergency ambulance service. **[RP 170 ¶¶ 3, 4]** VRECC filed a counter-motion for summary judgment on the Anti-Donation clause issue and

asked the court to declare that VRECC has authority to enter to a contract and charge for the provision of dispatch service. **[RP 332-335]**

Following briefing and argument by counsel, the district court denied LCAS's motion and granted partial summary judgment in favor of VRECC finding as a matter of law that (1) the Anti-Donation Clause of the New Mexico Constitution prohibits the provision of emergency medical dispatch services by VRECC LCAS, a private ambulance provider, without appropriate compensation and (2) that VRECC possesses the power under state law to charge an appropriate amount in compensation for provision of emergency dispatch services and to contract with LCAS to collect that amount. **[RP 435 ¶¶ 1, 3]** However, as the district court pointed out, the summary judgment was not a final order as "the issue of the appropriate monetary amount which Defendants may charge and any legal and factual issues related to monetary amount were not raised in these motions for summary judgment and are not determined...." **[RP 435 ¶ 5]** The district court advised the parties to attempt to negotiate the proper fees and stated that if such negotiations are unsuccessful the parties could request a hearing and have the court make the determination. **[8-8-12 Tr. 68:9-13; 69:2-70:6; 71:7-19; 72:6-14]**

Two years after the order granting partial summary judgment was entered and following the denial of LCAS's application to this Court for interlocutory review, LCAS moved the district court to reconsider its legal determinations that the Anti-

Donation Clause prohibits the provision of emergency medical dispatch services without appropriate consideration and that Defendants possess power under state law to impose a fee or charge for provision of emergency medical dispatch services.

**[RP 460-477]** LCAS's request was denied. **[RP 534 ¶¶ 1, 2]**

However, during the hearing on the motion for reconsideration, the court asked counsel "if I deny the motion to reconsider...what's being tried?" **[9-30-15 Tr. 59:2-4]** Counsel for LCAS responded that the remaining issue was whether or not LCAS "actually owe[s] a fee." **[9-30-15 Tr. 59:5-6]** Following a brief discussion over whether or not LCAS would be liable for retroactive fees based on allegations of how those fees were established, the court stated "I want finality so that you can get a decision...[b]ecause I think these guys need is a decision that is final and not a trial." **[9-30-15 Tr. 59:6-61:25; 63:12-16]** In support of this decision, the court stated:

[LCAS] is not doing this just because they have big hearts. Maybe they are. They're doing it because they can make profit off of it. So what I'm trying to tell you is you need these two decisions decided by an appellate court or this will go on into eternity.... At least you'll be closer to finality here, and you can ... agree for your client's benefit, even though you might have the authority now to do it, not to impose it yet, just so you can avoid another lawsuit....I think you appeal, and you wait for a decision, and you hope and you pray that it's not too long, and that there's clarity then..."

**[9-30-15 Tr. 66:1-13; 67:15-17]** Thus, the court set aside its earlier finding that "[t]he issue ... and any legal and factual issues related to monetary amount were

not raised in [the] motions for summary judgment,” and summarily ruled on the remaining issues presented in LCAS’s complaint to render the resulting order “final and appealable.” [RP 533-534]

LCAS filed a notice of appeal from the district court’s September 27, 2012 Order Granting Partial Summary Judgment on the application of the Anti-Donation Clause and VRECC’s power to charge LCAS for emergency dispatch services (“September 2012 Order”). [RP 536] LCAS also appealed the district court’s November 23, 2015 order denying in part LCAS’s motion to reconsider the legal issues determined in the September 2012 Order (“November 2015 Order”).<sup>1</sup> [RP 536]

## ARGUMENT

### I. SUMMARY OF ARGUMENT

The Anti-Donation Clause expressly prohibits governmental entities from making “any donation to or in aid of any person, association or public or private corporation.” N.M. Const. art. IX, § 14. The provision of the extensive effort to provide dispatch services creates significant expense for VRECC and provides an

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<sup>1</sup>Defendants VRECC and Village of Los Lunas filed a notice of cross appeal herein on the district court’s *sua sponte* ruling on the issues pertaining to validity of fees.

[RP 545]

indispensable benefit for LCAS, a private corporation. [RP 367, 368, 203]; [BIC 9]. Further, VRECC is expressly empowered by the Joint Powers Act to enter into contracts to obtain fair compensation for those services. See, *infra* p. 21.

The trial court was correct in ruling that the provision of the dispatch services without receiving appropriate compensation was a violation of the Anti-Donation Clause and in ruling that VRECC had the power to charge LCAS for those services. Therefore, those rulings should be upheld by this Court.

**II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING LCAS'S MOTION TO RECONSIDER THE LEGAL CONCLUSIONS STATED IN ITS SEPTEMBER 2012 ORDER**

The first issue presented in LCAS's appeal pertains to the Court's November 2015 Order denying LCAS's motion to reconsider the two legal issues decided in the court's September 2012 Order. As a preliminary matter, the court's decision to deny LCAS's motion for reconsideration should not be reviewed because LCAS failed to brief the issue. *State v. White*, 1984-NMCA-033, ¶ 1, 101 N.M. 301, 681 P.2d 736 (Failing to brief an issue listed in the docketing statement deems the issue abandoned on appeal.). Moreover, the basis for LCAS's appeal of the November 2015 order is unclear. See also *State v. Padilla*, 1975-NMCA-084, ¶ 9, 88 N.M. 160, 538 P.2d 802 (holding an issue is deemed abandoned when an appellant's argument of trial court error "is less than clear" and there is "no authority to support the argument or to give [the court] a hint as to what he is arguing....").

LCAS filed notice of appeal from the district court's November 2015 Order and stated in its docketing statement that it was appealing the portion of the November 2015 Order pertaining to the district court's denial of LCAS's request to reconsider the September 2012 rulings on VRECC's authority to charge for providing emergency dispatch services and the constitutional prohibition on providing those services without charge. [RP 560; 560 F.N. 5] However, LCAS's brief in chief does not brief the argument that the denial of LCAS's request for consideration was in error. Thus, the district court's denial of LCAS's motion to reconsider the legal issues decided in the September 2012 Order should not be reviewed.

Even if the issue was reviewable, for the reasons that follow, the district court's decision not to reconsider its November 2015 order was not an abuse of its discretion.

#### **A. Standard of Review**

"A district court has broad discretion in ruling upon a motion for reconsideration and will only be reversed for an abuse of that discretion." *Gem, Inc. v. Ky. Cent. Life Ins. Co.*, 1997-NMSC-052, ¶ 28, 124 N.M. 186, 947 P.2d 143. An abuse of discretion is found "only where the judge has acted arbitrarily or unreasonably under the particular circumstance," *United Salt Corp. v. McKee*, 1981-NMSC-052, ¶ 6, 96 N.M. 65, 628 P. 2d 310. An appellate court "cannot say the trial

court abused its discretion by its ruling unless [it] can characterize [the ruling] as clearly untenable or not justified by reason.” *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M. 438, 971 P.2d 829. “When there exist reasons both supporting and detracting from a decision, there is no abuse of discretion.” *Talley v. Talley*, 1993-NMCA-003, ¶ 11, 115 N.M. 89, 847 P.2d 323.

**B. LCAS did not present a valid argument for reconsideration of the issues decided in the November 2015 Order.**

The court’s determination that LCAS’s arguments for reconsideration - (1) that the court’s legal determination was not supported by findings and (2) that “the [c]ourt’s rulings on powers issue and on the anti-donation clause issue were plainly wrong and contrary to New Mexico statutes, regulations, and New Mexico case law” did not warrant reconsideration of the legal issued determined in the September 2012 order was not unreasonable for at least two reasons. [RP 559] *First*, a district court is not required to state the reasons for its decision or make findings of fact when ruling on summary judgment. *George v. Caton*, 1979-NMCA-028, ¶ 6, 93 N.M. 370, 600 P.2d 822. Thus, not stating reasons for its decision or findings of fact, particularly when the facts are undisputed was within the court’s discretion, did not constitute legal error and does not require the court to reconsider its decision.

*Second*, LCAS argued that the court’s decision in the September 2012 order was “wrong” but did not present a new theory or new law in its motion for reconsideration that would provide a reason for the court to reconsider its initial



decision. LCAS, in its briefing on reconsideration, presented the same arguments that were rejected by the court on summary judgment making LCAS's request for reconsideration no more than a veiled attempt to get a second bite at the apple by taking advantage of the fact that the case had been reassigned to a new judge. Rejecting this gamesmanship and denying the motion to reconsider was well within the district court's discretion and should not be found unreasonable by this Court.

For the reasons stated, the district court's decision to not reconsider its prior order was not unreasonable and thus not an abuse of that court's discretion.

### **III. THE DISTRICT COURT CORRECTLY GRANTED PARTIAL SUMMARY JUDGMENT IN VRECC'S FAVOR.**

LCAS's second issue for review pertains to the two legal conclusions set forth in the district court's September 2012 Order granting partial summary judgment for VRECC. For the reasons set forth below, the district court correctly decided the two legal issues and properly granted partial summary judgment for VRECC.

#### **A. Standard of review**

The facts underlying the issues in this appeal are not in dispute. **[BIC 11]** Thus, the district court's determinations that (1) the Anti-Donation Clause of the New Mexico constitution prohibits the provision of emergency medical dispatch services by VRECC to LCAS without appropriate compensation by LCAS to VRECC and (2) VRECC possesses the power under state law to charge LCAS an appropriate amount in compensation for the provision of emergency medical

dispatch services and to contract with LCAS to collect that amount in error are legal conclusions based on undisputed facts. The standard of review, therefore, is whether the district court correctly applied the law to the facts. *Matter of Estates of Hayes*, 1998-NMCA-136, ¶ 8, 125 N.M. 820, 965 P.2d 939; *see also Golden Cone Concepts, Inc. v. Villa Linda Mall, Ltd.*, 1991-NMSC-097, ¶ 8, 113 N.M. 9, 820 P.2d 1323 (“When a party is challenging a legal conclusion, the standard for review is whether the law correctly was applied to the facts, viewing them in a manner most favorable to the prevailing party, indulging all reasonable inferences in support of the court’s decision, and disregarding all inferences or evidence to the contrary.”).

**B. The district court correctly applied the law on the Anti-Donation Clause to the undisputed facts in this case to conclude that providing emergency dispatch services without appropriate compensation by the private for-profit beneficiary of those services violates the New Mexico constitution.**

Article 9, Section 14 of the New Mexico Constitution prohibits “the state [and] any county, school district or municipality, except as otherwise provided in this constitution, [from] directly or indirectly lend[ing] or pledg[ing] its credit or mak[ing] any donation to or in aid of any person, association or public or private corporation....” The word donation is applied “in its ordinary sense and meaning, as a gift, an allocation or appropriation of something of value, without consideration to a ...private corporation.” *Village of Deming v. Hosdreg Co.*, 1956-NMSC-111, ¶ 36, 62 N.M. 18, 303 P.2d 920 (1956) (internal quotation marks omitted). It is oft

repeated by New Mexico Courts that “the language of the [anti-donation clause] is so clear and explicit that it does not require construction; all that need be done is read it and apply the language in its ordinary sense.” *Hutcheson v. Atherton*, 1940-NMSC-001, ¶ 29, 44 N.M. 144, 99 P.2d 462.

- i. Providing emergency dispatch services to LCAS without compensation is an unconstitutional donation to a private corporation.*

The district court correctly determined that applying the above language of the Anti-Donation Clause in its ordinary sense to the uncontested facts of this case establishes a violation of the Anti-Donation Clause: an agent of the state (VRECC) is appropriating something of value (emergency dispatch services) to a private corporation (LCAS).

- ii. The arguments asserted by LCAS to refute the conclusion that providing dispatch services to LCAS without compensation to a private entity violates the Anti-Donation Clause are without merit.*

LCAS’s assertions with respect to this issue can be grouped into three main arguments. LCAS’s first argument is that the service of providing emergency dispatch is not in fact a “donation.” As stated above a donation under the anti-donation clause is defined as “a gift, an allocation or appropriation of something of value, without consideration to a ...private corporation.” *Village of Deming*, 1956-NMSC-111, ¶ 36. Thus, in order to succeed on this argument, LCAS has to establish that (1) providing emergency dispatch services is not an allocation of something of

value or (2) that it provided adequate consideration for the value that it received. For the reasons that follow, LCAS cannot establish either.

It is uncontested that providing emergency dispatch services is “an allocation of something of value.” The emergency medical dispatch services provided by VRECC requires the expenditure of significant resources in providing all of the information necessary to respond to calls [RP 367], providing ongoing communication during the response to calls, [RP 368], and tracking LCAS’s units that have responded to calls [RP 368]. This requires VRECC to provide 24-7 staffing with multiple trained and certified dispatchers. [RP 203] Moreover, LCAS has maintained throughout this litigation that “LCAS cannot effectively provide rapid or efficient emergency ambulance service, without VRECC’s provision of emergency 911 medical dispatch service.” [BIC 9]

Similarly, LCAS does not contest that it has not provided consideration to VRECC for the provision of emergency dispatch services evidenced primarily by LCAS’s unwavering position since this litigation ensued that VRECC is prohibited from charging or collecting a fee for these services. *See infra* p. 20. LCAS instead appears to argue that providing ambulance service to the residents of Valencia County is “adequate consideration” to VRECC for the provision of dispatch services. [BIC 35]. LCAS does not, however, explain how providing ambulance services to the community is consideration for the government donation it receives. LCAS’s

failure to develop this argument should render it unreviewable by this Court. *See White*, 1984-NMCA-033, ¶ 1; *Padilla*, 1975-NMCA-084, ¶ 9; *In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (“Issues raised in an appellate brief but unsupported by cited authority will not be reviewed on appeal.”). To the extent that the argument is reviewable, LCAS has not established how facilitating the provision of the ambulance services to the community provides adequate consideration for VRECC for its provision of governmental aid to LCAS in the form of dispatch services.

LCAS’s second argument is that the emergency dispatch services provided by VRECC are not a prohibited “outright donation” to LCAS. Instead, LCAS argues that the benefit of receiving free emergency dispatch services is incidental to VRECC’s obligation to provide emergency dispatch services under the E-911 Act. This argument is flawed for at least two reasons. *First*, but for the court order requiring VRECC to continue dispatching to LCAS during the pendency of this litigation, VRECC has no direct obligation to otherwise provide emergency dispatch services. *See* § 63-9D-3(Q). The E-911 act gives PSAPs the *option* of directly dispatching emergency response services and VRECC *chose* to provide the enhanced dispatch service to LCAS. *Id.* That choice, however, does not constitute an obligation, statutorily or otherwise, to provide emergency dispatch services. Without a direct obligation to provide emergency dispatch services there can be no

incidental benefit. Thus, LCAS's argument that the benefit it receives is incidental to VRECC's direct obligation under the E-911 Act fails.

*Second*, LCAS's argument ignores the fact that LCAS is in fact completely dependent on the dispatch provided by VRECC to effectively run its business. As the Court said in *Hutcheson*, "the fact that a corporation is "engaged in serving a highly commendable public purpose...alone does not warrant the State or any county or city in making a donation or pledging its credit in aid of it." 1940-NMSC-001, ¶ 30. The Court in that case explained that the purpose of the business is irrelevant to whether or not the governmental aid is an unconstitutional donation. *Id.* The sole factor is whether the aid was "incidental or inconsequential or whether it was direct and substantial. ¶ 35. *See also* [BIC 40 ("New Mexico courts have commonly found that the Anti-Donation Clause is violated...when the state or local governments...have effectively relieved private persons and entities from obligations they would otherwise have to meet."))]

Here, there is no question that the aid to LCAS is direct and substantial. LCAS readily admits that dispatch services require significant resources are required for LCAS to provide rapid or efficient emergency ambulance service. Moreover, there is no question that the government, in this case VRECC, is relieving LCAS of an obligation that it would otherwise have to meet.

LCAS cannot establish that the court incorrectly applied the definition of donation to the facts of this case.

*iii. The indigent exception to the Anti-Donation Clause does not exempt LCAS from the constitutional prohibition on receiving donations from a government entity*

Finally, LCAS argues that while the Anti Donation clause may generally prohibit donations by governmental entities to private corporations, the provision of emergency dispatch services without compensation is not a violation of the Anti-Donation Clause because it falls within the “sick and indigent” exception.

The Anti-donation Clause makes seven exceptions to its prohibition on governmental donations. N.M. Const. art. IX, §14. Relevant to this issue is Subsection B (“the sick and indigent exception”) which states, “[n]othing in [Section 14] prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.” *Id.* LCAS argues that VRECC’s emergency medical dispatch falls under the sick and indigent exception to the Anti-Donation Clause. Although LCAS does not clearly state the basis for this conclusion, it appears that LCAS is arguing that the entire government donation of dispatch services is exempt under the “sick and indigent” exception because an undisclosed percentage of the people receiving the service may be sick and indigent.

This is essentially the same argument struck down by the New Mexico Supreme Court in *State ex. rel. Mechem v. Hannah*. 1957-NMSC-065, 63 N.M. 110,

314 P.2d 714. In *Hannah*, the Court determined that because “the standards of eligibility for participation in the [program] did not limit participation in the [p]rogram to persons who were ‘sick and indigent’ within the meaning of the provision contained in art. IX, § 14 of the Constitution of the State of New Mexico” the act attempted to give public money to private individuals that were not necessarily “indigents or paupers.” *Id.*, ¶¶ 4, 16, 40. As a result the Court held that the program was not exempted under the exception for “sick and indigent.” *Id.*, 40. *See also* N.M. Att’y Gen. Op. 61-84 (1961) (determining that the failure to specifically show that the services are provided to the sick and indigent residents renders the exception to the anti-donation clause in applicable). Here, like in *Hannah*, there is no requirement that a person be “sick and indigent” to receive emergency dispatch service. As a result, part of the donated service may be provided to “individuals that were not indigents or paupers.” In line with the Court’s holding in *Hannah*, the district court in this case therefore correctly determined that the sick and indigent exception does not exempt the unconstitutional donation.

As part of its “sick and indigent exception argument, LCAS also attempts to argue that, because VRECC did not claim that funding to LCAS through the Valencia County Indigent Fund and EMS fund violates the Anti-Donation Clause, VRECC recognizes that such funding is not an unconstitutional donation. LCAS then extends this unsupported assertion to conclude that E-911 dispatching is similar



to those sources of funding and is therefore also not a gift or donation. This argument should not be considered because there is no connection between those sources of funding and the cost to VRECC to provide LCAS with emergency dispatch. Moreover, LCAS has no support for its initial premise that those alternate sources of funding are constitutional or that VRECC agrees that those sources of funding are constitutional.

**C. The district court correctly determined that VRECC has power and authority to enter into a contract with LCAS to charge for and collect payment for the provision of emergency dispatch services to LCAS**

As the court properly determined, VRECC is not prohibited from contracting with LCAS to charge and collect an appropriate fee for the provision of emergency medical dispatch services.

LCAS expends the majority of its brief providing a complex analysis of all potential legislative authority that could arguably confer upon VRECC the power to impose a “revenue-enhancing dispatch fee” in an attempt to establish that the court incorrectly determined that VRECC could charge LCAS for emergency dispatch services. LCAS, however, ignores the simple fact that, independent of whether or not providing emergency dispatch services without payment constitutes an unconstitutional governmental donation in violation of the Anti-Donation Clause of the New Mexico Constitution, and independent of whether or not there is some express or implied legislative power to impose fees, VRECC has express statutory

authority to enter into a contract with a private entity to collect payment in exchange for providing a service.

VRECC is a joint powers entity with the authority to exercise any powers common to the entities that formed it, NMSA 1978 § 11-1-3 (1983). Los Lunas, the City of Belen and the Village of Bosque have express statutory authority to enter into contracts, protect its property, and exercise other privileges of municipal corporations not inconsistent with New Mexico law. NMSA 1978 §§ 3-18-1 (C), (E), (F) (1972). As to any of the issues involved in this appeal, Valencia County's powers are the same as those granted municipalities. NMSA 1978 § 4-37-2 (1975). Contrary to LCAS's unsupported assertion that LCAS is attempting to require a "revenue-enhancing dispatch fee," VRECC has made no attempt to assess a "dispatch tax," in any way assess an across the board "dispatch fee," or force or coerce LCAS to pay a fee for service. VRECC is merely attempting to contract with the direct beneficiary of its services to charge and collect an appropriate fee to cover its costs for providing that service.

As set forth in the facts, each entity under the Joint Powers Agreement is required to cover the additional costs of dispatch based on the number of calls to that county or municipality. It is only fair that VRECC should be able to contract to recoup these costs incurred for dispatching for LCAS, which directly profits from

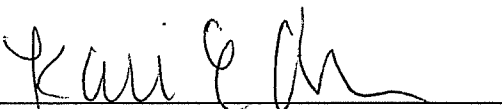
the dispatch service that VRECC provides, and which would otherwise be borne by the county and municipal taxpayers.

### CONCLUSION

For the reasons stated, VRECC respectfully requests that this Court affirm the district court's order granting partial summary judgment in favor of VRECC and County Defendants and finding that (1) providing emergency medical dispatch services to a private ambulance provider without payment constitutes an unconstitutional government donation in violation of the Anti-Donation Clause of the New Mexico Constitution and (2) that VRECC possesses the power to charge an appropriate amount in compensation for provision of emergency dispatch services to LCAS and to contract with LCAS to collect that amount.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY certify that I sent a copy of this Answer Brief via email to the following counsel of record pursuant to Rule 12-307.2(B) NMRA on November 10, 2016:

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