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2ND JUDICIAL DISTRICT COURT
Bernalillo County
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CLERK OF THE COURT
Alyssa Garza

IN THE STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

PAUL GESSING *and* CARE NET OF ALBUQUERQUE, INC.

Plaintiffs,

v.

STEPHANIE YARA, *in her official capacity as director of finance and administration for the City of Albuquerque*; CAROL M. PIERCE, *in her official capacity as director of family and community services of the City of Albuquerque*; *and* PLANNED PARENTHOOD OF THE ROCKY MOUNTAINS, INC.

Defendants.

Case No. D-202-CV-2023-00316

PLAINTIFFS' RESPONSE TO THE CITY DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

"The Anti-Donation Clause . . . prohibits the use of state or local governmental funds to benefit private organizations." *City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1147 (D.N.M. 2008).[1] Yet such a private benefit is precisely what happened when the City Council of Albuquerque voted a "council-directed sponsorship" for Planned Parenthood, not as a purchase of services, but as a political statement reacting to a forthcoming U.S. Supreme Court decision on abortion. The City bureaucracy's attempt after-the-fact to paper over the obvious donation with a contrived services agreement cannot fix the reality that this was an illegal donation. The facts pled by Plaintiffs are certainly sufficient to survive a motion to dismiss.

FACTUAL BACKGROUND

The donation

The New Mexico constitution contains an anti-donation clause which states, "Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation. . . ." N.M. Const. art. IX, § 14; Compl. ¶ 13. Unfortunately, the Albuquerque City Council did just that when it voted to give $250,000 in taxpayer money to Planned Parenthood. *Id*. at ¶ 2. This came directly following the leaked draft majority opinion in *Dobbs v. Jackson Women's Health Organization*, serving as a "sponsorship" to Planned Parenthood as a sign of solidarity with the pro-choice side. *Id.*

The next day, Councilwoman Tammy Fiebelkorn championed the vote, declaring in a press release, "While extremists attack choice nationwide and the Supreme Court seems poised to take away women's rights and control of their own bodies, we affirmed our respect and support for women's reproductive freedoms. I'm proud to have sponsored this amendment to provide vital support for Planned Parenthood." *Id.* at ¶ 18. She continued, saying, "These funds support our local Planned Parenthood clinic to ensure that all Albuquerque women have access to family planning, abortion, and other reproductive health services." *Id.* at 19.

A few months later, the City of Albuquerque ("the City") entered into a "social services agreement" with Planned Parenthood of the Rocky Mountains. *Id.* at ¶ 3. This vague agreement

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[1] Quoting H. Stratton & P. Farley, *Office of the Attorney General, State of New Mexico, History, Powers & Responsibilities, 1846–1990* at 125 (Univ. of N.M. Printing Servs. 1990).

has minimal performance expectations, no specific metrics, and no meaningful accountability. *Id.* Planned Parenthood will receive $250,000 in quarterly payments over two years (July 1, 2022 through June 30, 2024) per the terms of the agreement, signed August 5, 2022. *Id.* at ¶¶ 20–21.

Later that same month, the Council considered a proposed motion to withdraw the donation to Planned Parenthood and instead give it to Barrett House, a local homeless shelter. *Id.* at ¶ 23. Councilwoman Fiebelkorn defended the donation, expressing her sadness that Planned Parenthood would only receive $250,000 for their "amazing services[.]" *Id.* She continued, "The reason it came about is because I am pro-choice. I am a supporter of Planned Parenthood. Period. And I was happy, proud to sponsor this budget amendment." *Id.* Fiebelkorn also declared that she wanted "to be known as a Planned Parenthood supporter." *Id.* at ¶ 24. The motion was amended, still giving Planned Parenthood $250,000 but also giving $100,000 grants to Barrett House and Prosperity Works. *Id.* at ¶ 25. This version passed. *Id.*

On their website, Planned Parenthood of the Rocky Mountains acknowledged the donation, thanking the City and urging others to send a message of thanks to Councilors for ensuring patients have "access to the full spectrum of reproductive health care, including abortion care." *Id.* at ¶ 26.

The plaintiffs

After learning that his taxpayer dollars were being used in a donation to Planned Parenthood, Paul Gessing sought legal counsel. Paul is a homeowner in the City. *Id. at* ¶ 27. He pays property taxes and also pays gross receipts taxes when he frequently makes purchases in the City. *Id.*

Care Net is a pregnancy resource center in the City. *Id.* at ¶ 28. It provides pregnancy-related medical services, including free pregnancy testing, free sexually transmitted infection (STI) testing, and free parenting and pregnancy counseling and classes. *Id.* Many of its services overlap with Planned Parenthood, but because the donation was a council-directed sponsorship rather than an open request for proposals, Care Net had no opportunity to apply for the funds.

STANDARD OF REVIEW

The issue on review for a rule 1-012(B)(6) dismissal is "whether the facts as stated in a complaint state a claim for relief." *Blea v. City of Espanola*, 1994-NMCA-008, 117 N.M. 217, *218 (Ct. App. 1994). "In ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted," this court assumes "as true all facts which are well pled, and the complaint

must be construed in a light most favorable to the party opposing the motion and with all doubts resolved in favor of the sufficiency of the complaint." *Shea v. H.S. Pickrell Co.*, 1987-NMCA-149, 106 N.M. 683, *865 (Ct. App. 1987). "The purpose of a motion to dismiss for failure to state a claim for relief is to test the legal sufficiency of the claim, not the facts that support it." *Trujillo v. Berry*, 1987-NMCA-072, 106 N.M. 86, *87 (Ct. App. 1987). The mere "possibility of recovery based on a state of facts provable under the claim bars dismissal." *Id.* at *88.

Courts only "infrequently" grant motions to dismiss for failure to state a claim. *Las Luminarias v. Isengard*, 1978-NMCA-117, 92 N.M. 297, *300 (Ct. App. 1978). Moreover, "[o]nly when there is a total failure to allege some matter which is essential to the relief sought should such a motion be granted." *Id.*

ARGUMENT

A. The council-directed sponsorship is an illegal donation under the Constitution.

"The constitution makes no distinction as between 'donations', whether they be for a good cause or a questionable one. It prohibits them all." *State ex rel. Mechem v. Hannah*, 63 N.M. 110, 120 (1957) (quoting *State ex rel. Sena v. Trujillo*, 46 N.M. 361, 369 (1942)). To determine whether an appropriation is an illegal donation, a court evaluates "its nature and the circumstances surrounding it." *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 50. If an appropriation "take[s] on character as a donation in substance and effect," it is illegal. *Id*. When evaluating an appropriation, the court should consider "the ills [the anti-donation clause] was intended to correct," 1985 N.M. AG LEXIS 36, *4, which includes stopping "gifts or donations disguised as business transactions." *City of Raton*, 600 F. Supp. 2d at 1161.

Here, the nature and circumstances of the sponsorship clearly indicate an illegal donation. In this specific case, three red flags point to that conclusion. First, there was no open bidding process for the services. Second, the legislative history plainly shows the intent to make a donation. Third, the agreement is bare-bones and does not guarantee adequate consideration.

i. There was no open bid or contract process for the services.

The first sign of trouble is when an appropriation is earmarked rather than processed through the normal procurement system. As the City's own Inspector General said recently in considering another anti-donation case, "City personnel should have slowed down to ensure proper procedures

were being followed and that the purchase met all standards."[2] Those proper procedures are laid out in the City's procurement manual, which pledges "to reduce unethical behavior by providing a procurement process that promotes fair and open competition. Competition is the foundation of any public procurement process." City of Albuquerque Procurement Manual, pg. 1 (Oct. 2019).[3] The City's procurement principles include "ensure transparency," "obtain the best value for the money expended," and "promote competition and allow a fair opportunity to compete." *Id*. at 2.

Here, normal procedures for procurement were not followed, and no fair and open competition was held. There was no request for information, request for proposals, sealed bids, or neutral panel of city procurement officers deciding among bidders. There was no public posting identifying the services the City thought it required, the approximate amount it thought those services should cost, and the criteria for successful bids. Plaintiff Care Net did not receive a fair opportunity to compete. It offers free pregnancy testing, free sexually transmitted infection (STI) testing, and free parenting and pregnancy counseling and classes (Compl. ¶ 28). Yet it never had a chance to vie for the City's funding. Nor was there transparency. The City bureaucracy worked with Planned Parenthood in private to compose an agreement for services. Finally, the agreement's primary goal is to give $250,000 to Planned Parenthood, not to obtain services at the best price possible for taxpayers. The lack of an open bidding process is a major red flag that this was an illegal donation.

ii. The legislative history shows a clear intent to make a donation.

Councilwoman Fiebelkorn was absolutely clear about why this donation was made: "The reason it came about is because I am pro-choice. I am a supporter of Planned Parenthood. Period." (Compl. ¶ 23). The Court should take her at her word. (*See also* Compl. ¶¶ 18-19 and 23-24). The City argues in its motion that Fiebelkorn was speaking as a single individual on the Council, and her stance "does not mean the *City Council* as a legislative body approved funding PPRM healthcare services in the FY 2023 Budget so as to gift PPRM." Motion at 5-6 (emphasis original). This is flawed in two respects. First, Fiebelkorn's comments are highly illustrative of the Council's intent in approving the sponsorship. "In determining legislative intent it is proper to look to the

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[2] Report of Investigation, File No. 22-0203-C, *Alleged violation of Article IX Section 14 regarding the purchase and installation of stadium turf and a misuse of taxpayers' dollars*, City of Albuquerque Office of the Inspector General (March 10, 2023), pg. 16.

[3] Available at https://www.cabq.gov/dfa/documents/city-of-albuquerque-procurement-manual.pdf.

legislative history of an act or contemporaneous statements of legislators while the legislation was in the process of enactment." *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 35. New Mexico courts look to the statements of bill sponsors as especially insightful to determine legislative intent. *See, e.g., State ex rel. League of Women Voters v. Herrera*, 2009-NMSC-003, ¶ 26 (relying on floor speeches by the principal Senate author of the conference report and the chief House sponsor). Again, this Court must look at the "circumstances surrounding" the donation. *Moses*, 2019-NMSC-003, ¶ 50. Here, Fiebelkorn's comments are highly relevant evidence of the circumstances—she pushed it into the budget to make a political statement.

The City's response is also flawed to suppose the Council as a whole "approved funding PPRM healthcare services." Amendment 13 simply said the money was "for Planned Parenthood" (Compl. ¶ 16). The final adopted budget simply listed "Planned Parenthood NM" under the Department of Family & Community Services (Compl. ¶ 17), again with no reference to healthcare services. Taking only the facts provided in the complaint as true, and drawing inferences in favor of the Plaintiffs, this Court should conclude the Council was acting in line with the sponsor's intent, which was to make a donation to Planned Parenthood, not to purchase wellness services or sex and parenting education.

iii. The agreement's threadbare nature shows that this was a donation.

Courts are to be vigilant for "gifts or donations disguised as business transactions." *City of Raton*, 600 F. Supp. 2d at 1161. Courts must ensure an "exchange of adequate consideration." 2019 N.M. AG LEXIS 11, *13-14. Here, there is a services agreement, but its bare-bones nature, lacking even basic performance metrics, provides taxpayers no guarantee of adequate consideration.

The agreement identifies three "outputs." First, PPRM must "offer healthcare services to New Mexican residents," namely "wellness visits, breast exams, telehealth visits, health center visits and any follow-up or treatment as needed, cancer screening and prevention services, provision of birth control and testing for sexually transmitted infections." (Compl. Ex. A, p. 16). PPRM must document this by "report[ing] on the number of clients served and the number of each service provided." *Id*. In other words, Planned Parenthood could provide one wellness visit, report it, and fulfill its obligation; there is no expectation for a particular number of clients or visits.

The City responds in its brief by saying this is an unwarranted deduction: "if PPRM only provided services to a single patient, it would not be able to obtain reimbursement for $250,000 in services, because the City is to 'pay PPRM on a 'cost reimbursement basis'" and "all requisitions for payment must be supported by documentation of services in PPRM's files." Motion at 6-7. First, this is an interpretation, and all inferences on a motion to dismiss should be drawn in favor of the Plaintiffs. Second, this interpretation is belied by Appendices 2 & 4, which states that all $250,000 will go to paying salaries and benefits for PPRM employees. No provision is made in the Agreement for "consumable supplies" like pregnancy or STI tests that require "cost reimbursement" or "requisitions for payment." 100% of the money is dedicated to salaries for staff, specifically the three nurses and three health assistants identified in Appendix 4. If those staff people "offer services," the Agreement will have been fulfilled, and PPRM is entitled to the full $250,000, regardless of the actual number of patients seen or services provided.

The second output is to "expand health equity by promoting equitable access to services and care." Planned Parenthood is to do this by "disaggregating data to assess for any difference in patient access, experience, or clinical outcomes across demographic groups, including age, race, ethnicity, income level, region of residence, etc." (Compl. Ex. A, pp. 16-17). In other words, Planned Parenthood must produce some sort of report, which could be as simple as reporting the demographic data it already collects.

The City responds that the demographic data reported must be "for actual patients who receive services under the PPRM Agreement," and thus "PPRM would not be able to simply transmit demographic data it already has on file for services provided before the Agreement took effect." Motion at 7. This is a gloss on the text of the agreement; the relevant section has no line saying "for patients who receive services under the agreement." Nor is "patient" defined elsewhere as "persons receiving services under this agreement." Again, inferences must be drawn in favor of the Plaintiffs, not the Defendants. But even if the City's reading is right, so what? That hardly substantiates the claim that a donation of $250,000 is not a sham to say that PPRM must provide a basic demographic rundown of the patients it sees pursuant to the Agreement.

The third output is to "provide patient education to 8,000 participants regarding healthy choices on sexuality and parenting. The agency will report numbers served; monitor strategies, outputs, and outcomes." The output has no specifics or details—whether it covers providing information

on Planned Parenthood's website, speaking at school assemblies, or providing individual counseling. It also has no specifics on the curriculum that will be used in this education.

The City responds in its motion that "PPRM could not satisfy the patient education deliverable by simply tracking visits to a website by members of the public. It will have to provide the education to *patients* receiving services under the PPRM Agreement." Motion at 7 (emphasis original). Again, nothing in the agreement says this. Nothing in the Agreement defines "patient" as "a person who comes to PPRM's Albuquerque clinic seeking services." The operative word is actually "8,000 *participants*." Indeed, were participant defined as the City suggests, then PPRM's work presenting in schools or churches or tabling at public events would not count, even if that may constitute a significant portion of PPRM's educational outreach. Regardless, because there is no definition of participant, the Agreement leaves it up to PPRM to define who counts as a participant. Drawing all inferences in favor of the Plaintiffs, as is necessary at this stage, one could easily conclude a website visitor could count as a participant because that person receives parenting information from PPRM. Where in the agreement does the City draw a line between a person who gets the same information from a website versus a school assembly?

Squabbling over whether website visitors count should not obscure the larger point: the agreement provides no specifics as to the "patient education to 8,000 participants regarding healthy choices on sexuality and parenting." There is nothing to substantiate that these educational activities, whether at school assemblies, public events, or one-on-one counseling sessions, combine with the other outputs to create $250,000 in value. The law requires that the City purchase "a real product." *City of Raton*, 600 F. Supp. 2d at 1161. The Agreement provides no evidence of such a purchase—reflecting the fact that it did not go through a normal, robust procurement process, it uses high-level language without setting specific expectations to actually deliver value.

Finally, even if PPRM reports numerous specific wellness services it provided, and documents 8,000 educational counseling sessions, the appropriation would still be an illegal donation. The legislative history makes that abundantly clear, and PPRM's after-the-fact reporting of services can't change that reality. It remains a "donation disguised as a business transaction," even if the business later reports that it provided some services. *City of Raton,* 600 F. Supp. 2d at 1161.

This interpretation is confirmed by the City's Inspector General report on the Gladiators Stadium deal. There, the City Attorney argued that the City received adequate consideration for

its support of the new turf field because the City received 50 tickets for every home game, the Gladiators had to provide players and coaches to support city youth activities, and the City had a right to at least 14 days per year of free use of the facility for youth activities.[4] Yet the City Inspector General saw through this "consideration" for what it was—a donation disguised as a business transaction. The Inspector General found employees were pressured by City leaders, report at pg. 12, and that the promised consideration was not being tracked and measured, *id*. at 14. On that basis, the IG concluded the deal was actually an illegal donation rather than a legitimate agreement for services and dismissed the supposed "consideration" as insufficient to avoid an anti-donation violation. *Id*. at 17 & 19. The New Mexico Department of Finance & Administration, after reviewing the Gladiator deal, reached the same conclusion. *Id*. at 11 & 15. The IG and DFA legal analyses both confirm that even where some consideration is offered, it cannot save an appropriation where the overall facts and circumstances show the substance is that of an unconstitutional donation.[5]

B. The sick-and-indigent exception does not apply here.

The City leans heavily on the first exception to the anti-donation clause, which provides that "[n]othing in this section prohibits the state or any county or municipality from making provisions for the care and maintenance of sick and indigent persons." N.M. Const. Art. IX, § 14(A). First, if Plaintiffs are correct about the purpose of this appropriation, then the sick-and-indigent exception does not apply. The City Council did not appropriate these funds to "make provision for the care and maintenance of sick and indigent persons." The City Council appropriated these funds to make a political statement about abortion rights. A sham donation to a hospital is no less unconstitutional than a sham donation to a school or Boy Scout troop. The inquiry can end there. Note that the Inspector General did not even ask whether the Gladiators deal fit within the economic development exception to the anti-donation clause; any sham deal fails the clause—only purposeful choices to promote economic development or to provide for the sick fit the exceptions.

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[4] Alan Heinz, Office of the City Attorney, Letter (Dec. 9, 2022), at pg. 2-3 (exhibit to Report of Investigation, File No. 22-0203-C, *Alleged violation of Article IX Section 14 regarding the purchase and installation of stadium turf and a misuse of taxpayers' dollars*, City of Albuquerque Office of the Inspector General (March 10, 2023)).

[5] The DFA analysis is not publicly available, and so is attached as exhibit A to this motion in the style of an unpublished case.

Second, two of the three outcomes specified in the agreement do not "provide care for sick persons"; they require a demographic report and education on sex and parenting. Neither of these things is direct care for individual sick or indigent patients. The City's response is to point out that the wellness programs required by Outcome 1 are preventive in nature, and preventive services are covered by the exception. Motion at 9. Even if components of Outcome 1 are treatment or preventative care, Outcomes 2 and 3 are not care for the sick, preventive or otherwise. A report on demographics is not "provision of care for sick persons." Neither are classes on parenting. So even if the City is right that the wellness programs fall within the sick and indigent exception, this Court should still strike the agreement because much of it does not fit the "care for the sick" exception.

Third, "the sick and indigent exception does not permit the state or a local government to make donations to a private or nonprofit organization that are used for the organization's operating expenses." 2011 N.M. AG LEXIS 15, *15-16. *Accord* 1956 N.M. AG LEXIS 81, *4-5 ("Article IX, Section 14 of the Constitution would also prohibit the use of public funds to operate a privately leased county hospital."). Appendix A of the agreement covers operating expenses: it states that all $250,000 will go to cover staff salaries and benefits, namely three nurses and three health center assistants. The City's Response says as much: "The PPRM Agreement is paying for the salary and benefits of PPRM health center nurses and case managers who are providing healthcare services in exchange for this funding." Motion at 10. It may be that these nurses and health center assistants care for sick individuals, but this is insufficient: the funds must be used to care for specific individual patients, not as general funds for operating costs. The constitutionally correct answer is to "make a periodic accounting to the city . . . listing the names and addresses of sick and indigent persons who have been recipients of the service" and then to receive reimbursement on a cost basis. 1961 N.M. AG LEXIS 82, *3. That is not the type of agreement we have here. The City has given PPRM a check for its ongoing operating expenses without any metric for the number of services to be provided or the per-patient cost of those services—little less a system of reimbursement based on billing for services rendered like any other doctor's office. That is in direct conflict with the Attorney General's interpretation of this clause.

The "sick and indigent persons" exception also does not apply when a contract does not lead to new or additional services beyond those already offered in the community, but "instead provides a subsidy to a private concern" that happens to operate in the medical arena. 1970 N.M. AG LEXIS

26, *5-6. The agreement does not require Planned Parenthood to provide new or additional services. It is entirely possible that Planned Parenthood will use the City's funds to supplant private funds to offer the same services, freeing up the private funds for other uses. Again, at the motion-to-dismiss stage, the inferences should be drawn in favor of the Plaintiffs that these are not new services but instead a "money is fungible" supplementation of current operations. That is, after all, the best way to deliver a disguised donation: by using City funds for preexisting costs like salaries, so the flexible funds that covered those costs previously can be moved to other priorities.

The City in its motion completely misses the point of the argument. The City is correct that the A.G. Opinion states a county may not "provide funding to a private business in consideration for having the business enter the ambulance services market." Motion at 10. "There was no requirement in the case in question that the business haul sick and indigent persons who were not being cared for by existing private ambulance services." *Id*. Is that not precisely the problem here? Nothing in the agreement requires that PPRM care for sick and indigent persons who would not receive services from PPRM or other providers anyway. The City's Motion acknowledges, "PPRM was already providing such services here." *Id*. That's the point—when the City gives PPRM cash to do what it was already doing anyway, supplanting existing revenue sources with City dollars to free up those existing revenue dollars for other uses by PPRM, it's a donation. It's not a contract to provide new services to city residents—it's a gift, a subsidy for existing costs.

CONCLUSION

In all the back and forth above, this Court cannot lose sight of the big picture. At this stage, the Court's job is to determine whether it is possible for the Plaintiffs to prove facts showing "the nature and the circumstances" of the appropriation indicate its "character" is "a donation in substance and effect." *Moses*, 2019-NMSC-003, ¶ 50. Plaintiffs have pled facts sufficient to meet that burden—that the circumstances surrounding the appropriation at issue here make a plausible claim that it is an unconstitutional donation in substance and effect. The lack of a fair and open bidding process, the legislative history, and the threadbare nature of the agreement all provide sufficient reason to conclude Plaintiffs have a viable claim for an unconstitutional donation disguised as a business transaction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing was electronically filed and served through the Court's E-file and E-service system on the following parties on the 12th day of April, 2023.

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By /s/ Matthew Lang
Matthew Lang

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September 16, 2022

Mark Motsko
CIP Official, City of Albuquerque
1 Civic Plaza NW #7057
Albuquerque, NM 87102
RE: Project No. 21-F2583 ABQ Recreational Facilities Upgrades:
Request for Reimbursement #1

Dear Mr. Motsko:

The Department of Finance & Administration ("DFA")/Local Government Division("LGD") has received and reviewed the City of Albuquerque's ("CABQ") reimbursement request for Appropriation 21-F2583, Albuquerque Turf Project, as well as the Agreement ("Agreement") Among the City of Albuquerque, The Duke City Gladiators ("Gladiators"), and Global Spectrum, L.P. The request for reimbursement is denied based on the information provided below.

The language for the appropriation law reads:

> 24. [O]ne hundred sixty thousand dollars ($160,000) to acquire property for and to plan, design and construct artificial turf playing fields at park and recreational facilities, including swimming pools, tennis courts, sports fields, open space, medians, bikeways, bosque lands and trails, in Albuquerque in Bernalillo County.
>
> 2021 N.M. Laws, ch. 138, § 29, ¶ 24 (First Session).

After a review of the supporting documentation for the reimbursement provided by CABQ, DFA's legal counsel determined that the use of the funds would violate the terms of the appropriation, cited above, and that if CABQ were to use the funds in the proposed manner it would also violate the New Mexico Anti-Donation Clause, N.M. CONST, art. 9, § 14.

The proposed expenditure to purchase artificial turf violates the appropriation law on two accounts. Firstly, the spirit and letter of the law is for CABQ to purchase artificial turf for public use in public spaces. In no way does it mention or allude to the use of turf for the principal benefit of a private for-profit company, but rather enumerates various examples of public spaces that any citizen of CABQ can enjoy without significant burden. Secondly, the appropriation law here requires that the turf be used in spaces that are in Albuquerque, in Bernalillo County, not Sandoval County.

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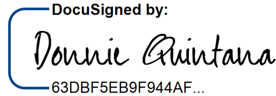
In addition to violating the appropriation law, this expenditure would amount to a violation of the Anti-Donation Clause. CABQ, in its Agreement, is proposing to purchase the turf to provide directly to a private entity. According to the documents provided, CABQ is contracting for the turf bear the Gladiators' name at each end of the turf and its logo in the center of the turf. Such logos are indelible and function as a private entity's brand on what would be public property purchased with public funds. In this Agreement, CABQ also agrees to restrict the use of the turf to the Gladiators almost exclusively during its season.

Such exclusivity is further evidenced by the Agreement's stipulation that the turf will be used and located in Rio Rancho, Sandoval County, and in the closely guarded possession of the Gladiators in the off-season. Finally, and in addition to the foregoing, the Agreement does not contemplate any reasonable consideration on behalf of the Gladiators to compensate CABQ for use of the turf.

If you have any questions, please feel free to contact me at (505) 490-5788,

Sincerely,



Donnie Quintana, Director,
Local Government Division

Cc: Carmen Morin, DFA/LGD Community Development Bureau Chief
Monica Tapia, Community Development Project Manager