

BEFORE THE ATTORNEY GENERAL

STATE OF COLORADO

**IN THE MATTER OF THE MERGER OF LUTHERAN HOSPITAL ASSOCIATION OF
THE SAN LUIS VALLEY AND CONEJOS COUNTY HOSPITAL CORPORATION**

JURISDICTION OF THE ATTORNEY GENERAL

1. On May 1, 2013, Lutheran Hospital Association of the San Luis Valley doing business as San Luis Valley Regional Medical Center (“SLVRMC”), and Conejos County Hospital Corporation (“CCHC”), presented the Agreement and Plan of Merger (“Merger Agreement”) for the merger between them (the “Transaction”) to the Attorney General for review.
2. The Attorney General has reviewed the Transaction under the Hospital Transfer Act (the “Act”), C.R.S. §§ 6-19-101, *et seq.*, and under the Attorney General’s Common Law authority over charitable trusts. *See* C.R.S. §§ 24-31-101(5), 6-19-104(1).
3. The Attorney General determines that the Act applies to the Transaction and now issues this opinion with regard to this matter.
4. For a transaction involving a nonprofit hospital and another nonprofit entity, the Act requires the Attorney General to determine as a threshold matter whether the transaction will result in a material change in the charitable purposes to which the assets of the hospital have been dedicated and whether the transaction will result in a termination of the Attorney General’s jurisdiction over those assets caused by a transfer of a material amount of those assets outside of the state of Colorado. C.R.S. § 6-19-203(1).

DECISION

5. After an extensive review of documentation relevant to the Transaction and meeting with counsel for the parties, the Attorney General finds and determines that the Transaction involves a transfer or other disposition of the assets of a hospital from a nonprofit entity to a nonprofit entity. The Attorney General further finds the Transaction will not result in a material change to the charitable purposes to which the assets of the hospitals have been dedicated. Finally, the Attorney General finds the Transaction will not result in a termination of the Attorney General’s jurisdiction over those assets caused by a transfer of a material amount of those assets outside of the state of Colorado. Accordingly, the Transaction may proceed without further review.

BASIS FOR DECISION

A. Factual and procedural background.

i. Lutheran Hospital Association of the San Luis Valley

6. SLVRMC is a Colorado nonprofit corporation that was formed on January 29, 1928. On October 30, 1972, it filed its Election to Accept the Colorado Nonprofit Corporation Act.

7. SLVRMC has received tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Agreement and Plan of Merger § 4.02(d).

8. The stated goals of SLVRMC are, among others, to “(a) establish, maintain, operate, manage, support and stimulate the development of a health care system, including, without limitation, hospitals, clinics and other facilities that provide in-patient, including acute care, emergency care, long-term care, ancillary care, and out-patient care, accommodation, diagnosis and treatment to persons suffering from injury, disease or any other condition where medical, surgical, rehabilitative, nursing and associated professional services may be required.” Amended and Restated Articles of Incorporation of Lutheran Hospital Association of the San Luis Valley, Art. IV(a).

9. SLVRMC owns and operates the San Luis Valley Regional Medical Center in Alamosa, Colorado.

ii. Conejos County Hospital Association

10. CCHC is a Colorado nonprofit corporation that was formed on May 21, 2003.

11. CCHC was formed by SLVRMC in conjunction with the Conejos County Hospital District. CCHC borrowed funds, SLVRMC guaranteed the loans, and the CCHC purchased substantially all of the assets of the Conejos County Hospital District, including the Conejos County Hospital.

12. The May 2003 sale of hospital assets of the Conejos County Hospital District to CCHC should have been presented to the Attorney General for review under the Hospital Transfer Act. The Attorney General is satisfied that the May 2003 sale did not result in a material change in the charitable purposes to which the assets of the hospital were dedicated and did not result in a termination of the Attorney General’s jurisdiction over those assets.

13. CCHC has received tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Agreement and Plan of Merger § 4.01(d).

14. CCHC owns the Conejos County Hospital, a critical access hospital, in La Jara, Colorado. SLVRMC provides day to day management services for the Conejos County Hospital under a management agreement with CCHC.

15. The stated goals of CCHC are, among others, to “(a) establish, maintain, operate, manage, support and stimulate the development of a health care system, including, without limitation, hospitals, clinics and other facilities that provide in-patient, including acute care, emergency care, long-term care, ancillary care, and out-patient care, accommodation, diagnosis and treatment to persons suffering from injury, disease or any other condition where medical, surgical, rehabilitative, nursing and associated professional services may be required.” Articles of Incorporation of Conejos County Hospital Corporation, Art. IV(a).

iii. Merger Agreement

16. The Merger Agreement was entered into by and between SLVRMC and CCHC with a proposed effective date of July 1, 2013 (“Effective Date”), contingent on certain conditions. Agreement and Plan of Merger, at 1. As of the Effective Date, SLVRMC and CCHC will merge. *Id.* § 1.01. SLVRMC will continue as the surviving company and CCHC will cease as a separate entity, other than for certain tasks necessary to wrap up CCHC’s operations. *Id.*

17. At the Effective Date, SLVRMC shall become the owner of all of the assets of CCHC and shall become subject to all of the debts and liabilities of CCHC. *Id.*

18. The name of the surviving company will be Lutheran Hospital Association of San Luis Valley d/b/a San Luis Valley Health. *Id.* § 2.01.

19. The initial Trustees of SLVRMC after the Effective Date will be a combination of trustees currently serving on the SLVRMC board and trustees currently serving on the CCHC board. *Id.* § 2.03.

20. After the merger, SLVRMC will accept assignment of CCHC’s critical access hospital provider agreements. *Id.* § 2.04. SLVRMC will continue to operate from at least two locations under separate provider agreements. *Id.* One of these will be at the existing SLVRMC hospital location and the other at the existing CCHC critical access hospital location. *Id.*

B. The Transaction does not result in a material change in the charitable purposes to which the assets of the hospitals have been dedicated.

21. The Attorney General finds and determines that the Transaction does not result in a material change in the charitable purposes to which the assets of the hospitals have been dedicated.

22. The goals of CCHC, as stated in its Articles of Incorporation, are, among others, to “(a) establish, maintain, operate, manage, support and stimulate the development of a health care system, including, without limitation, hospitals, clinics and other facilities that provide in-patient, including acute care, emergency care, long-term care, ancillary care, and out-patient care, accommodation, diagnosis and treatment to persons suffering from injury, disease or any other condition where medical, surgical, rehabilitative, nursing and associated professional services may be required.” Articles of Incorporation of Conejos County Hospital Corporation, Art. IV(a).

23. The stated goals of SLVRMC are, among others, to “(a) establish, maintain, operate, manage, support and stimulate the development of a health care system, including, without limitation, hospitals, clinics and other facilities that provide in-patient, including acute care, emergency care, long-term care, ancillary care, and out-patient care, accommodation, diagnosis and treatment to persons suffering from injury, disease or any other condition where medical, surgical, rehabilitative, nursing and associated professional services may be required.” Amended and Restated Articles of Incorporation of Lutheran Hospital Association of the San Luis Valley, Art. IV(a).

24. The Restated Bylaws of SLVRMC indicate that the objects and purposes for which it is founded include “[t]o operate and manage a non-profit health system in the San Luis Valley[,] composed of Alamosa, Conejos, Costilla, Mineral, Rio Grande and Saguache counties[,] of the State of Colorado including such other health institution or institutions with the permanent facilities necessary to provide medical, surgical, primary care and specialist providers, behavioral health and ancillary services on an inpatient/outpatient and long-term basis commensurate with the level of resources and needs in the Valley.” Restated Bylaws of Lutheran Hospital Association of the San Luis Valley Dba San Luis Valley Health § II.1.1.

25. The Bylaws also indicate that SLVRMC will “provide a framework for the identification of Valley health needs and the setting of appropriate institutional policy concerning those identified needs” and that it will “carry on educational activities related to the provision of care to the sick and injured or to the promotion of the people of the San Luis Valley.” *Id.* § II.1.2-.3.

26. Once the merger is complete, the CCHC hospital assets will become part of SLVRMC as the surviving entity. Those assets will be administered in accordance with the SLVRMC Articles of Incorporation and Bylaws.

27. The initial Trustees of SLVRMC after the merger will include current trustees of SLVRMC and current trustees of CCHC.

28. After the merger, SLVRMC will accept assignment of CCHC's critical access hospital provider agreements and will continue to operate the Conejos County Hospital and the San Luis Valley Regional Medical Center.

29. These facts satisfy the Attorney General that the Transaction does not result in a material change in the charitable purposes to which the assets of the hospitals have been dedicated.

C. The Transaction will not result in a termination of the Attorney General's jurisdiction over the hospital assets caused by a transfer of a material amount of those assets outside of the State of Colorado.

30. The Attorney General finds and determines that the Transaction does not result in a termination of the Attorney General's jurisdiction over the hospital assets caused by a transfer of a material amount of those assets outside of the State of Colorado.

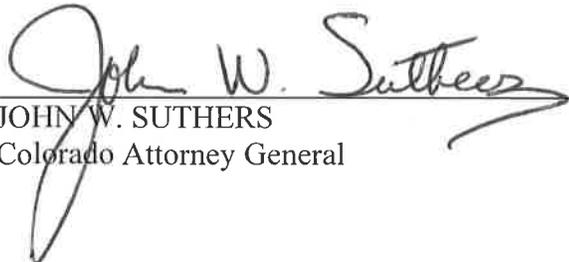
31. The terms of the Transaction provide for integrating CCHC into SLVRMC to form a health system for the San Luis Valley that will continue to operate both the Conejos County Hospital and the San Luis Valley Regional Medical Center.

32. Accordingly, the hospital assets will remain in the State of Colorado and will remain subject to the Attorney General's continuing jurisdiction.

CONCLUSION

33. Based on the foregoing, and pursuant to the Act, the Attorney General determines that the Transaction may proceed without further review.

Issued this 24th day of June, 2013.



JOHN W. SUTHERS
Colorado Attorney General

CERTIFICATE OF DELIVERY

This is to certify that I have duly served the within IN THE MATTER OF THE MERGER OF LUTHERAN HOSPITAL ASSOCIATION OF THE SAN LUIS VALLEY AND CONEJOS COUNTY HOSPITAL CORPORATION upon all parties herein by mailing copies of same to their office this 24th day of June, 2013 addressed as follows:

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