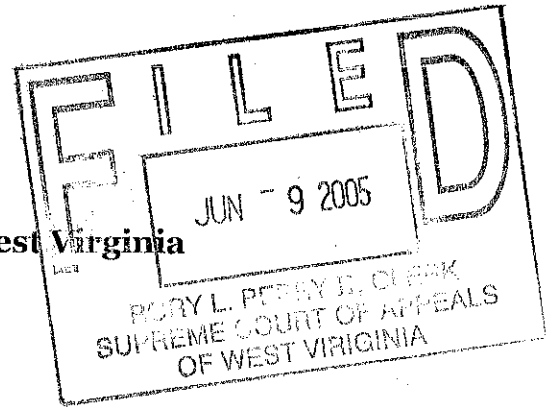


In the Supreme Court of Appeals of West Virginia



**Appalachian Emergency
Medical Services, Inc.,
a West Virginia nonprofit corporation,**

Petitioner,

v.

**Rebecca Melton Craig,
State Tax Commissioner,**

Respondent.

**Civil Action No. Below: 02-C-0239
Cabell County Circuit Court
Honorable John L Cummings**

Appellants's Brief in Support of Appeal

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In the West Virginia Supreme Court of Appeals

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**Civil Action No Below.: 02-C-0239
Circuit Court of Cabell County
Honorable John L. Cummings**

**Rebecca Melton Craig,
W. Va. State Tax Commissioner,**

Respondent.

Appellant's Brief in Support of Appeal

I.

Kind of Proceeding and Nature of Ruling Below

In 2001, Appalachian Emergency Medical Services, Inc. ("AEMS"), applied for tax exempt status for property it owns in Huntington, West Virginia, which is leased to a supervising organization, a nonprofit and charitable entity known as West Virginia EMS Technical Support Network, Inc. ("TSN"). The property is being used to carry out both TSN's and AEMS' charitable purpose and goal of providing emergency medical systems support in Cabell County and the surrounding area and on a statewide basis. By letter dated October 15, 2001, the Cabell County Assessor denied AEMS' request. Thereafter, AEMS sought a tax liability ruling by the State Tax Commissioner. In response, the State Tax Commissioner issued Property Tax Ruling 02-09 wherein the Commissioner ruled that the property was not exempt from *ad valorem* property taxation. (See Hearing Exhibit 1L-Property Tax Ruling 02-09 dated February 28, 2002).

AEMS appealed Property Tax Ruling 02-09 to the Circuit Court of Cabell County, West Virginia. An evidentiary hearing was held before the Honorable John L. Cummings on February 5, 2003, and the parties submitted responsive briefs after the transcript of the hearing was made available.

On October 19, 2004, Judge Cummings issued an Order affirming Property Tax Ruling 02-09. (See attached Order Affirming State Tax Commissioner dated October 19, 2004). Judge Cummings stated the following:

This Court finds that the Petitioner's use of the property in question is not charitable **because the property is held out and leased at a market rate for profit**. This use is inconsistent with a charitable purpose exemption to ad valorem taxation as set out in W.Va. Code § 11-3-9 and West Virginia Legislative Rule 110 C.S.R. 3.

(See Order Affirming State Tax Commissioner dated October 19, 2004 at page 2)(*emphasis added*).

AEMS seeks review before the West Virginia Supreme Court because when the facts of this case and the relationship between AEMS and TSN are viewed in totality, it becomes clear that AEMS has not used the property in a manner which conflicts with the charitable purpose exemption to *ad valorem* taxation as set forth in W.Va. Code § 11-3-9 and W.Va. 110 C.S.R. 3. The Judge's affirmation of the Property Tax Ruling 02-09 was clearly erroneous and not supported by the evidence of record.

The West Virginia Supreme Court has jurisdiction of this appeal pursuant to West Virginia Code § 58-5-1.

II.

Statement of Facts

AEMS was incorporated as a nonprofit West Virginia corporation on May 7, 1975, for the general charitable purpose of furthering and assisting the emergency medical services system in its region, which includes Cabell County.¹ (See Hearing Exhibit 1A - AEMS Certificate and Agreement of Incorporation). By letter dated June 18, 1975, AEMS was granted an exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. (See Hearing Exhibit 1C - IRS 501(c)(3) Ruling dated June 18, 1975).

AEMS is the owner of certain property located at 722 31st Street, Huntington, Cabell County, West Virginia, in Real Estate District Gideon-5, Map/Parcel numbers 22/90 and 22/92 (the "Property"). AEMS purchased the Property on March 27, 2000. AEMS financed the purchase of the Property and renovations of the building located on the Property by securing a loan in the amount of \$500,000.00 from Guaranty Bank & Trust Company. (See Hearing Exhibit 1D - Promissory Note and Exhibit 1E - Deed of Trust). The loan is repayable by AEMS in monthly installments of \$5,100.00 and is guaranteed by TSN. (See Hearing Exhibit 1F - Commercial Guaranty). AEMS leases the property to TSN. It must be emphasized that AEMS does not make a profit from the lease. (See Hearing Tr. 29). The lease payment has been used to make the loan payment. (See Hearing Tr. at 20).

AEMS and TSN are interlocking nonprofit/charitable organizations with a common mission and purpose. (See Hearing Exhibit 1A - AEMS Certificate and Agreement of Incorporation);(Hearing Exhibit 1G - TSN Articles of Incorporation dated August 16, 1994);(See Hearing Tr. at 7-10). TSN receives state and federal funds and grants

¹The region also includes Wayne County, Mingo County, Logan County, Lincoln County and Mason County.

administered through the Office of Emergency Medical Services (“OEMS”) of the West Virginia Department of Health and Human Resources for operating and supporting West Virginia’s emergency medical services (“EMS”) system. (See Hearing Tr. at 6). TSN provides support services to county level based EMS organizations like AEMS. (See Hearing Tr. - Testimony of TSN Executive Director Dennis Nurkiewicz at 7). There are seven regions and Cabell County is Region 2. (See Hearing Tr. at 9).

The support which TSN provides to EMS organizations in the seven regions includes personnel certifications; training for EMS personnel; and assisting in the licensure, recertification training and relicensure of personnel. (Id. at 7). TSN also does ambulance inspections, assists in agency licensure, helps in the development of treatment protocols, conducts special staff maintenance programs and stress debriefings. (Id.). Further, TSN operates and maintains the West Virginia EMS Communication System for use by EMS agencies and hospital emergency departments. (Id at 7,8).

TSN, as the entity supporting EMS systems across the entire state, works very closely with AEMS to provide support for the EMS system in AEMS’ region. (See Hearing Tr. at 30). AEMS is heavily involved in the actual governing of TSN as three of its representatives are on TSN’s Board of Directors. (See Hearing Tr. at 8-10). AEMS also has one alternate on the TSN Board of Directors. (Id.).

Cabell Huntington Hospital serves as regional medical command center. (See Hearing Tr. at 13). The decision was made to look for property in the Huntington area for TSN purposes. (Id.). The communications system had been undergoing an equipment upgrade from analog to digital broadcasting. (Id.). Part of the upgrade included a single site on-line real-time management system. (Id.). TSN needed to house that operation at a

location that had a line-of-sight visibility to the communication tower at Rotary Park in Cabell County. (Id.).

TSN explored various ways to house the operation, including leasing or buying property. (See Hearing Tr. at 14). The lease rates were exorbitant. (Id.). TSN considered purchasing the property directly. (Id.). However, a plan was developed to get AEMS to increase its activity in the region and to increase its involvement with TSN. (Id. at 15). There was a conscious decision to strengthen the role of the regional entities in EMS support. (Id.). The decision involved state officials. (Id.).

TSN and AEMS planned and worked together to select and acquire the Property. (See Hearing Tr. at 16). Meetings were held. (Id.). The use of the Property would not have been any different if TSN had purchased the Property. (See Hearing Tr. at 17-18). Once the loan is repaid, AEMS plans to use the money generated from the lease to provide funding for training of EMS personnel and otherwise provide support to the EMS agencies in the region, thereby further carrying out its charitable mission. (Id. At 18-19).

The leasing of the Property to TSN fulfills the mission of AEMS as set forth in the corporate documents. (See Hearing Tr. at 29). The Property provides a location for TSN administrative staff that work in the region. (Id.). The Property provides a physical location where TSN can carry out its charitable purposes. (Id.).

AEMS also uses the Property for meetings and activities. (See Hearing Tr. at 31.). AEMS has several members on the TSN Board of Directors. (Id.). Thus, AEMS has a vested interest in the activities of TSN. (Id.). In fact, TSN carries out its activities on behalf of the member organizations, which includes AEMS. (Id.). TSN activities in the region are essentially the same as AEMS' activities in the region. (Id. at 31-32).

The lease is consistent with the contract that TSN has with the AEMS Board of Directors for the supportive relationship between the two organizations. (See Hearing Tr. at 29). The action taken was taken with the view of fulfilling the charitable mission and purpose of both organizations. (Id.). The purpose of the Property and the lease arrangement is to further the mission of both organizations. (Id.). After the mortgage is paid, AEMS will be using the money to fulfill its charitable mission, including establishing a training scholarship fund, which will provide tuition for individuals entering the EMS profession. (See Hearing Tr. at 32-33).

The charitable purposes of TSN are necessarily intertwined with the charitable purposes of AEMS. This is evidenced by AEMS Agreement of Incorporation (See Hearing Exhibit 1A) and TSN's Articles of Incorporation (See Hearing Exhibit 1G). TSN serves as an umbrella agency for the regional EMS agencies such as AEMS. In effect, the two organizations are one in the same.

Specifically, AEMS' charitable purposes include, but are not limited to the following:

To collect, develop, analyze and provide data for problem solving, decision making, evaluation, review and short range and long range community planning for a better coordinated and more efficient Emergency Medical Services system within the region served by the Corporation.

(See Exhibit 1A - Agreement of Incorporation at ¶ III 1). In addition, AEMS' charitable purpose includes working with public institutions of higher learning, any public association, or any branch, agency or affiliate thereof, in the planning or programming of any matter pertaining to emergency medical services. (Id. at ¶ III 3). Also, AEMS' charitable purpose includes establishing, cooperating and participating with any public, eleemosynary or religious hospital in any plan or program concerning any matter pertaining to EMS, including providing such services. (Id. at ¶ III 4, 6). It is AEMS' charitable purpose to do

any and all things in the interest of promoting public health as related to EMS. (Id. at ¶ III 7). AEMS is to help resolve differences of opinion between the various areas of interest associated with the EMS system, in order to obtain a coordinated EMS system. (Id. at ¶ III 10).

Further, one of AEMS' charitable purposes is to establish, maintain, staff or cooperate and assist in the establishment, maintenance and staffing of educational classes or schools or courses of study designed and having the purpose of training and the education of persons to deal with matters pertaining to emergency medical services. (Id. at ¶ III 5). It must be emphasized that the Property in question, has conference and class room space to help carry out such training and education. (See Hearing Tr. at 21).

More importantly, one of AEMS' charitable purpose is to purchase property to be utilized for the objects set forth above. (See Exhibit 1A - Agreement of Incorporation at ¶ III 8,9). AEMS is to cooperate with all State Agencies designated to carry out EMS and EMS responsibilities. TSN is a grantee agency of the State of West Virginia to carry out EMS and EMS responsibilities. (See Hearing Tr. at 5-6).

Also, in the event that the activities of AEMS are discontinued and the holdings liquidated, the proceeds are to be distributed to the State or Federal Government for a public purpose or to a corporation or trust fund organized exclusively for charitable purposes. (See Exhibit 1A - Agreement of Incorporation at ¶ IX).

III.

Assignment of Error

The Circuit Court of Cabell County clearly erred in affirming property tax ruling 02-09 which denied AEMS' application for tax exempt status on property owned in Huntington, West Virginia, because the substantial, reliable and probative evidence of record shows that AEMS is a non-profit organization with a charitable purpose; the property is being leased to a related supervising entity which also is a non-profit organization with a charitable purpose; the property is not being leased at a market rate for profit; and the use of the property is not inconsistent with the charitable purpose exemption to *ad valorem* taxation as set forth in W.Va. Code § 11-3-9 and W.Va. Rule 10 C.S.R. 3.

IV.

Points and Authorities

CASES:

Board of Supervisors of Wythe County v. Medical Group Found., Inc.,
134 S.E.2d 258, 262 (Va. 1964).

City of Nome v. Catholic Bishop of Northern Alaska,
707 p.2d 870 (Alaska 1985).

Walker v. West Virginia Ethics Commission, 492 S.E.2d 167 (W.Va. 1997).

Wellsburg Unity Apartments Inc. v. County Comm. of Brooke County,
503 S.E.2d 851, 853 (W.Va. 1998).

Statutes:

W.Va. Code § 58-5-1

W.Va. Code § 11-3-9(a)(12)

26 U.S.C. § 501(2005)

Regulations:

W.Va. C.S.R. Section 3 §110- 2.10

W. Va. C.S.R. Section 3 § 110-3-19

W. Va. C.S.R. Section 3 § 110-3- 2.40

W.Va. C.S.R. Section 3 § 110-3-19.5

Constitution

W.Va. Const. Art. X, § 1

V.

Standard of Review

The Court applies a two prong differential standard of review, final orders and alternate dispositions are reviewed under abuse of discretion standard and the Circuit Court's underlying factual findings are reviewed under a clearly erroneous standard. Further, questions of law are all subject to a *de novo* review. *Walker v. West Virginia Ethics Commission*, 492 S.E.2d 167, 175 (W.Va.1997).

VI.

Discussion

- 1. AEMS qualifies for the *ad valorem* taxation exemption because the substantial, reliable and probative evidence reflects that AEMS and TSN are § 501(c)(3) organizations, the property is used exclusively for charitable purposes and the property is not being held or leased at a market rate for a profit.**

The Property is exempt from *ad valorem* property taxes under applicable provisions of law providing for such exemptions. Specifically, in the exercise of its authority granted by Section 1, Article X of the Constitution of the West Virginia, the Legislature of West Virginia has provided from exemption of certain properties from *ad valorem* property taxes. See W.Va. Const. Art. X, § 1. Those exemptions include "property used for charitable purposes, and not held or leased for profit." W.Va. Code § 11-3-9(a)(12).

The AEMS Property is exempt from *ad valorem* property taxation under W.Va. Code § 11-3-9(a)(12) and the holding of *Wellsburg Unity Apartments, Inc. v. County Commission of Brooke County*, 503 S.E.2d 851 (W.Va. 1998). In that case, the Supreme

Court of West Virginia, ruled that, by its terms, W.Va. Code § 11-3-9(a)(12) establishes two tests for property tax exemption, a “status test” for the property owner and a “use test” for the use of the property. (Id.).

Under the “status test”, a corporation or other organization owning an interest in property must be deemed a charitable organization under the provisions of Internal Revenue Code Section 501(c)(3). (See Hearing Exhibit 1L - Property Tax Ruling 02-09). Second, under the “use test”, the subject property of such a charitable corporation or organization: (1) must be exclusively used for charitable purposes and (2) can not be held or leased for profit. *Wellsburg Unity Apts., Inc. v. County Commission of Brooke County*, 503 S.E.2d 851, 854 (W. Va. 1998). Upon applying such tests to the circumstances of AEMS and the Property, it is clear that both tests are satisfied and the *ad valorem* tax exemption should apply.

a. Both AEMS and TSN satisfy the “status test” because of their qualification as § 501(c)(3) organizations under the Internal Revenue Code.

Specifically, the record shows that AEMS and TSN have been and continue to be recognized by the Internal Revenue Service as charitable non-profit corporations pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code. (See Hearing Exhibits 1C - IRS 501(c)(3) Ruling dated June 18, 1975 & 1I - IRS 501(c)(3) Ruling dated November 9, 1985). Thus, both organizations satisfy the status test.

b. The Property is used exclusively for charitable purposes.

The substantial evidence of record developed by testimony at the hearing and the corresponding exhibits shows that the Property is being used exclusively for charitable purposes for which AEMS and TSN qualify under Section 501(c)(3). The specific charitable purposes outlined in both organizations’ Articles of Incorporation are being carried out

every day at the Property. If TSN had purchased the Property itself, its use of the Property would remain exactly the same – in support of TSN’s, and AEMS’ charitable purposes. AEMS and TSN are intertwined charitable organizations with a common mission and purpose of planning, developing, and implementing a better coordinated and more efficient EMS system, with TSN overseeing all of the regions and AEMS focusing on the local region which includes Cabell County. AEMS representatives sit on the TSN Board of Directors. The charitable organizations are essentially one entity when it comes to providing support to the EMS systems. Thus, AEMS’ petition for exemption from *ad valorem* taxation should have been granted.

The Property is being used to support EMS systems throughout West Virginia. The Property is being used for EMS meetings and training. A conference room and classroom in the building are being utilized for this purpose. The Property is also used to house the TSN Huntington field office and the statewide emergency medical services telecommunication system which are TSN employees.

The state regulations which correspond to W.Va. Code § 11-3-9(a)(12) provide the following definition of charity:

2.10 The term “charity” means a gift to be applied consistently with the existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint.... It is immaterial whether the purpose is called charitable in the gift itself if it is so described as to show that it is charitable. Any gift not consistent with existing laws which is promotive of science or tends to the education, enlightenment, benefit or amelioration of the condition of mankind or the diffusion of useful knowledge, or is for the public convenience is a charity.

110 W.Va. C.S.R. 3 § 2.10. Clearly, the use of the Property is for educational purposes, including the diffusion of useful knowledge to EMS organizations throughout the state and for supporting EMS organizations. Thus relieving the bodies of those served by the EMS

organizations from disease, suffering or constraint, falls under the above quoted definition of charity. The AEMS Property is used to provide support services to county level based EMS throughout the State of West Virginia. These EMS organizations serve the general population within the areas covered by those organizations. The use of the Property is undoubtedly "for the benefit of an indefinite number of persons." See 110 W.Va. C.S.R. 3 § 2.10. Accordingly, the Property is being used exclusively for charitable purposes.

c. The AEMS property is not being leased or held out for profit.

The Judge ruled that the use of the Property is not charitable because the Property is being held out and leased at a market rate for profit. (See Order Affirming State Tax Commissioner dated October 19, 2004). The Judge clearly erred by finding that the Property is being leased for a profit. The reliable, substantial and probative evidence of record shows that the property was not being held out and leased for profit. Thus, the *ad valorem* tax exemption should apply.

AEMS is not leasing the Property to TSN for profit. TSN pays for all other occupancy costs including, but not limited to, utilities, repairs and maintenance. (See Hearing Exhibit 1J - Lease at page 6). The facts show that the lease payment equals the mortgage payment. The state regulations applicable to the issue at hand define "non-profit" and "not-for-profit" as meaning the following:

[U]sed with a view to producing no profit on total aggregate operations other than that which is used or held for current or planned future use in furtherance of the charitable purposes of the organization. Charities and others operating property not used for profit are not precluded from extracting charges upon beneficiaries for services rendered, nor are they precluded from deriving profits from total aggregate operations or from individual beneficiaries on a case by case basis so long as total aggregate annual operations produce no significant economic benefit or inurement to private individuals or entities apart from those which are necessarily incorporated into the operations of the charitable activity.

110 W.Va. C.S.R. 3 § 2.40. The applicable regulations further state:

Realization of a surplus, or of positive net earnings, may not constitute a disqualifying private gain. So long as any such surplus or earnings are used in furtherance of the charitable activities of the organization, no disqualifying gain can be said to inure to the benefit of any private person.

110 W.Va. C.S.R. 3 § 19.5.

Under these definitions, the Property is not used for profit. The Property has always been, and is, used with a view to producing no profit as AEMS has never made a profit from the Lease. Currently, the \$5,100.00 monthly rental payments by TSN are used exclusively by AEMS to make the Loan payments. Moreover, even when the monthly rent was \$5,500.00, the amount of rent in excess of the monthly Lease payments was used for reducing the Loan principal, and for capital improvements, maintenance, repair and other expenses directly connected to the Property. Therefore, if any rent surplus existed, it was always used to maintain the Property and, "no disqualifying gain can be said to inure to the benefit of any private person." 110 W.Va. C.S.R. 3 § 19.5.

Property Tax Ruling 02-09 assumes that because AEMS was charging TSN \$5,500.00 for rent, when the Loan payments were \$5,100.00, AEMS was collecting market rent on the Property. (See Hearing Exhibit 1L at page 10). However, this assumption is erroneous for two reasons. First, when AEMS was collecting \$5,500.00 rent; the additional \$400.00 was always spent, or placed in escrow, for capital improvements, maintenance and expenses related to the Property. (See Hearing Exhibit 1J - Lease at page 7);(See Hearing Tr. at 20). This is prudent asset management. Once the Loan is paid off AEMS plans to use the rental payment proceeds for its charitable mission and purpose. (See Hearing Tr. at 19). AEMS never made a profit or had any money left over after maintaining the building.

The State Tax Commissioner's assumption was also erroneous because TSN is currently only paying rent at an amount equal to the monthly Loan payment. Collecting

enough rent to almost, or barely, break even is not considered market rent. Property Tax Ruling 02-09 appears to reason that because TSN has a freely assignable lease, that AEMS is leasing the Property for profit. (Id.). However, the fact that the lease is assignable by TSN provides no economic benefit to AEMS. If anything, the assignability of the lease by TSN adds value to TSN's leasehold interest in the Property. Accordingly, the second element of the use test, that the property not be held out or leased for profit, is satisfied.

Therefore, the Judge clearly erred by affirming the Property Tax Ruling 02-09. The Judge's denial of the *ad valorem* property tax exemption is not supported by the evidence of record. AEMS qualifies for the *ad valorem* property tax exemption.

2. AEMS and TSN's charitable purposes are so intertwined and they work so closely together to support the EMS system in West Virginia that they should be treated as one entity for the purpose of determining the *ad valorem* property tax exemption.

The Judge's focus should have been on the intertwined charitable purposes of AEMS and TSN. AEMS and TSN are essentially one entity when it comes to providing support for the EMS system in West Virginia. They should be treated as one entity for the purpose of determining the *ad valorem* property tax exemption. TSN, as the entity supporting EMS systems across West Virginia, works closely with AEMS to provide support for the EMS system in Cabell County and the region. AEMS is involved in the actual governing of TSN as it has several representatives on the TSN Board of Directors. In effect, AEMS is directing TSN in TSN's effort to provide EMS systems support to AEMS and other county level based EMS organizations. AEMS and TSN are basically one in the same when it comes to carrying out the charitable purposes for which they were chartered.

Therefore, the Judge's focus only on the Lease is misplaced. The Judge should have focused on the relationship of the two charitable entities. The facts show that the Property is not being held out and leased at a market rate for profit. Thus, the Judge erred by not

granting the *ad valorem* property tax exemption. The Judge seems to think that because there is a lease involved it is automatic that the Property is being held out and leased at a market rate for profit. However, this is not the case.

AEMS and TSN are working together to accomplish the charitable purpose for which they were chartered. The mere fact that a lease is involved should not disqualify AEMS from receiving tax exempt status, particularly when AEMS is not making a profit from the lease and the Property is being used exclusively for charitable purposes. Accordingly, the *ad valorem* tax exemption should apply.

The Virginia Supreme Court has held that the lease of land and buildings of one charitable corporation to another does not affect the tax exempt status of the land and buildings, where the lease is not a source of revenue or profit. *See Board of Supervisors of Wythe County v. Medical Group Found., Inc.*, 134 S.E.2d 258, 262 (Va. 1964). The aforementioned case involved one charity renting land and a building to another charity to be used as a hospital. The Virginia Supreme Court focused on the fact that the "lease between the Foundation and the Hospital Corporation was not a source of revenue or profit. The lease discloses a joint effort between two charitable corporations to accomplish the purpose for which they were chartered, and it does not affect the tax exempt status of the hospital property." *Id.* At 262. The same can be said in the present case. AEMS and TSN are engaged in a joint effort to accomplish the charitable purpose for which they were chartered.

Additionally, the Supreme Court of Alaska had held that property leased by a non-profit charitable group to another non-profit group will maintain its exemption if:

- The property is leased or rented for an exempt activity;
- The lease or rental payments are not the product of an owner's dominate profit motive;

- The lease or rental payments are incidental to and reasonably necessary for the exempt use of property and do not exceed the operational requirements of the exempt activity.

City of Nome v. Catholic Bishop of Northern Alaska, 707 p.2d 870 (Alaska.1985). Clearly, AEMS and TSN met this test. First, the property is leased for an exempt activity, a non-profit activity. Second, the rental payments are not the product of AEMS trying to make a profit, but instead trying to pay the mortgage and maintain the building. Finally, the rental payments are necessary for the exempt use of the property and do not exceed the operational requirements. The Court should follow the above referenced cases and find that the Property be exempt from *ad valorem* property taxation.

VII.

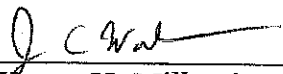
Prayer for Relief

WHEREFORE, for all the foregoing reasons, AEMS respectfully requests that the Court reverse the Circuit Court's Order Affirming State Tax Commissioner dated October 19, 2004 and find that the Property is exempt from *ad valorem* property taxation and for such other and further relief as this Court deems just with the circumstances.

Dated this 9 day of June, 2005.

**APPALACHIAN EMERGENCY MEDICAL
SERVICES, INC.,**

By Counsel:



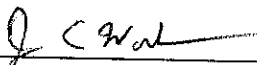
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Certificate of Service

I, Jason C. Workman, counsel for the Petitioner, Appalachian Emergency Medical Services, Inc., do hereby certify that I have served the attached "Appellant's Brief in Support of Appeal" upon counsel of record, by sending a true and exact copy thereof, by United States mail, postage prepaid, to the following:

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Dated this 9th day of June, 2005.



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