



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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**MANHATTAN JUDGE REJECTS CHALLENGE
TO PARTICIPATION OF VOLUNTARY HOSPITAL AMBULANCES
IN CITY'S 911 EMS SYSTEM**

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New York, Sept. 27, 2006 – New York County Supreme Court Justice Barbara R. Kapnick ruled late yesterday that the New York City Fire Department may continue its practice of permitting voluntary hospital ambulances to participate in the 911 emergency ambulance system, and may continue to dispatch such ambulances in response to calls to 911 requesting emergency medical assistance. Cessation of voluntary hospital participation would have had an exceedingly adverse impact upon the availability of 911 system emergency ambulance service, since some 40 percent of the ambulances dispatched by EMS in response to 911 calls are voluntary hospital ambulances.

"New York City residents are the real winners because this decision affirms the City's right to provide the public with the best EMS service in the nation," said Fire Commissioner Nicholas Scoppetta. "Since combining voluntary hospital ambulances with our own EMS personnel, we have seen the lowest response times in the history of EMS while being able to respond to an increasing number of emergency calls."

Assistant Corporation Counsel Michael S. Adler of the Law Department's Commercial & Real Estate Litigation Division, who led the legal team, stated: "We very pleased that the Court upheld the legality of this important component of the City's 911 emergency ambulance system. This enhances the availability of ambulances to respond to medical emergencies in New York City."

The decision came in two lawsuits, originally called *Golden v. Von Essen* (and now called *Markowitz v. Scoppetta*), which challenged the participation. The suits were brought by various public officials and various labor union officials. Those sued the City and various voluntary hospitals. The suits alleged that the agreements between the Fire Department and the voluntary hospitals authorizing such participation were unlawful, and that the challenged voluntary hospital participation must cease.

The suits challenged the agreements on three major grounds: (1) failure to follow franchise procedures allegedly required by law to authorize such usage of City streets for ambulance purposes; (2) failure to follow procurement procedures contained in chapter 13 of the NYC Charter; and (3) a "waste" of City resources in that the Fire Department had loaned without charge to voluntary hospital ambulances, radios and other equipment needed to communicate with 911 system dispatchers.

Rejecting these arguments, Justice Kapnick upheld the City's legal position, ruled in the City's favor as to all claims and dismissed the lawsuits. As to the franchise argument, she ruled that franchise procedures were unnecessary, since franchises are required only where usage rights are granted concerning "inalienable City property" and since the challenged agreements grant the hospitals no street usage rights but merely grant them rights to participate in the 911 system. As to the procurement argument, Justice Kapnick held procurement procedures to be unnecessary, reasoning (1) that such procedures are

required only as to matters paid for with City funds and (2) that the services here involve no payments by the City. Finally, as to the waste argument, she held no waste to be present given the lack of any showing of fraud, illegality or usage of City property or funds for entirely illegal purposes.

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