

# **Bond Case Briefs**

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## **EXEMPT ORGANIZATIONS - OHIO**

### **State ex rel. Atty. Gen. v. Vela**

**Court of Appeals of Ohio, Fifth District, Licking County - March 15, 2013 - N.E.2d - 2013 - Ohio- 1049**

The State filed action against incorporator and directors of non-profit foster home placement agency for disregard and exploitation of the agency.

The court of appeals held that:

- Non-profit foster home placement agency was a charitable trust;
- Audit report prepared by Auditor of State was admissible under the business records exception to the hearsay rule;
- Evidence was sufficient to establish that incorporator and director breached their fiduciary duties; and
- Evidence was sufficient to establish that incorporator and directors were unjustly enriched by using agency funds for personal interests.

In order to prove the existence of a charitable trust, a party must establish three elements: (1) a fiduciary relationship with respect to property arising under the law of the State or of another jurisdiction; (2) as the result of a manifestation of intention to create the trust; (3) which subjects an individual by whom the property is held to fiduciary duties to deal with this property within the State for any charitable, religious, or educational purpose.

In this case, the agency's articles of incorporation contemplated a fiduciary relationship between the agency and the children and families for whom the agency was created to serve, the agency was established as a non-profit organization under the Internal Revenue Code, and the agency's articles expressly prohibited the agency's incorporator and directors from using funds from the agency for any purpose other than charitable and educational purposes.