

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

SEP - 9 2005

FILED

A05-1742

State of Minnesota ex rel. Speaker of the House
of Representatives Hon. Steve Sviggum, et al.,

Petitioners,

vs.

Peggy Ingison, in her official capacity as
Commissioner of Finance or her successor,

Respondent.

ORDER

On August 31, 2005, 13 state legislators, including the Speaker of the House and the Majority Leader,¹ filed a petition for a writ of quo warranto in this court against respondent Peggy Ingison, in her official capacity as Commissioner of Finance. Petitioners challenge the constitutionality of expenditures from the state treasury made by respondent at the beginning of this fiscal biennium pursuant to court orders issued in *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. C0-05-5928 (Ramsey County District Court), in the absence of a legislative appropriation. They seek an order requiring respondent and her successors to cease and desist from any further disbursements of state funds at the end of the fiscal biennium without an appropriation by law.

¹ In addition to Speaker Steve Sviggum and Majority Leader Erik Paulsen, petitioners are State Representatives Paul Kohls, Scott Newman, Mark Buesgens, Tim Wilkin, Chris DeLaForest, Duke Powell, Kurt Zellers, Matt Dean, Jim Knoblach, Jeff Johnson, and Philip Krinkie.

"An action in the nature of *quo warranto* is 'a common law writ designed to test whether a person exercising power is legally entitled to do so. * * * It is intended to prevent exercises of power that are not conferred by law * * *.'" *State ex rel. Graham v. Klumpp*, 536 N.W.2d 613, 614 n.1 (Minn. 1995) (quoting *Black's Law Dictionary* 1256 (6th ed. 1990)). Under Minn. Const. art. VI, § 2 and Minn. Stat. § 480.04 (2004), this court has original jurisdiction to issue any writs and processes, including *quo warranto*, as "necessary to the execution of the laws and the furtherance of justice", * * *. *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992).²

In *Rice v. Connolly*, we reinstated *quo warranto* jurisdiction in the district court that the Rules of Civil Procedure had abolished in 1959. 488 N.W.2d at 245. We explained that in the future:

petitions for the writ of *quo warranto* and information in the nature of *quo warranto* shall be filed in the first instance in the district court. While this court retains its original jurisdiction pursuant to Minn. Stat. § 480.04 (1990), we today signal our future intention to exercise that discretion *in only the most exigent of circumstances*.

Rice, 488 N.W.2d at 244 (emphasis added).

² Article VI, section 2 provides that the court "shall have original jurisdiction in such remedial cases as are prescribed by law * * *." The court has construed the word "remedial" to include cases where common law remedies would be summarily afforded through the use of certain extraordinary writs, including *quo warranto*. *Page v. Carlson*, 488 N.W.2d 274, 277-78 (Minn. 1992) (citing *Lauritsen v. Seward*, 99 Minn. 313, 322, 109 N.W. 404, 408 (1906)). Section 480.04 states that this court "shall have power to issue * * * writs of * * * *quo warranto* and all other writs and processes, whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice."

Although the constitution and statutes make reference to writs of *quo warranto*, this court has explained several times that the common law writ of *quo warranto* was long ago replaced by the "information in the nature of *quo warranto*." *E.g.*, *State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 537, 48 N.W.2d 855, 860 (1951); *see also Rice*, 488 N.W.2d at 242 n.1 (Minn. 1992).

Petitioners implicitly address the court's directive in *Rice* that future quo warranto actions are to be filed in district court by proffering two reasons why the issues in this case are suitable for determination by this court. First, petitioners argue that the case presents purely legal, constitutional questions, with no known disputed issues of material fact. Second, they contend that time is of the essence because the case must be resolved prior to the end of the next biennium on June 30, 2007, and litigation in the district court followed by the normal appellate process will take too long. For the reasons that follow, we conclude that these reasons are not sufficient to overcome the requirement that quo warranto proceedings be initiated in district court.

In *Rice*, we did not condition our directive that quo warranto proceedings "shall be filed in the first instance in the district court" on the existence of disputed facts. *Rice*, 488 N.W.2d at 244. Rather, we established that filing in the district court would be the norm, with this court exercising original jurisdiction "in only the most exigent of circumstances." *Id.* Accordingly, the absence of disputed facts does exempt this action from the *Rice* directive to proceed in district court first.

Additionally, petitioners' desire for a final decision by June 30, 2007, almost two years from now, does not present "the most exigent of circumstances." Resolution of purely legal issues in the district court should not be a particularly time-consuming process. To the extent that the passage of time becomes a problem either in district court or in the event of an appeal, procedural mechanisms are available to address that issue, such as a motion to expedite proceedings or a petition for accelerated review under Minn. R. Civ. App. P. 118.

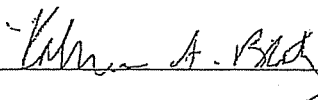
Because we conclude that petitioners have not demonstrated that “the most exigent of circumstances” exist to justify exercise of our original jurisdiction, the petition will be dismissed, without prejudice, so that petitioners can proceed in district court. We note that quo warranto is not an exclusive remedy, but “is intended to exist side by side with the appropriate alternative forms of remedy.” *Rice*, 488 N.W.2d at 244. Therefore, petitioners have several procedural alternatives to effectively raise their claims in district court. In accordance with *Rice*, they can file an information in the nature of quo warranto raising the issues they raised here. They can file a declaratory judgment action under Minn. Stat. ch. 555 (2004), as the court directed in *Seventy-Seventh Minnesota State Senate v. Carlson*, 472 N.W.2d 99 (Minn. 1991). Finally, petitioners can file a motion to intervene in the pending Ramsey County action, where another litigant apparently has moved to intervene in order to raise similar challenges to the expenditures challenged here.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition for writ of quo warranto be, and the same is, dismissed without prejudice.

Dated: September 9, 2005

BY THE COURT:



Kathleen A. Blatz
Chief Justice