

Pet 250

STATE OF MINNESOTA

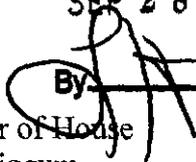
FILED
Court Administrator

DISTRICT COURT

COUNTY OF RAMSEY

SEP 28 2005

SECOND JUDICIAL DISTRICT

By  Deputy

Case Type: Other, Civil

State of Minnesota ex rel. Speaker of House of Representatives Hon. Steve Sviggum, Majority Leader Hon. Erik Paulsen, State Representatives Hon. Paul Kohls, Hon. Scott Newman, Hon. Mark Buesgens, Hon. Tim Wilkin, Hon. Chris DeLaForest, Hon. Duke Powell, Hon. Kurt Zellers, Hon. Matt Dean, Hon. Jim Knoblach, Hon. Jeff Johnson and Hon. Philip Krinkie, and State Senators Hon. Tom Neuville, Hon. Michele Bachmann, Hon. Sean Nienow, Hon. David Hann, Hon. Warren Limmer, Hon. Mady Reiter, and Hon. David Senjem, in their capacity as State Legislators and individually,

Case No. 09-05-9413

Wheeler
Related
CO-05-5928

Petitioners,

vs.

PETITION FOR WRIT OF QUO WARRANTO AND MEMORANDUM OF LAW

Peggy Ingison in her official capacity as Commissioner of Finance or her successor, and the State of Minnesota,

Respondents.

The above-named Petitioners respectfully petition the District Court to issue a writ of quo warranto to Respondent Peggy Ingison, Commissioner of Finance, requiring her (1) to show by what constitutional authority she disburses state funds at the end of the fiscal biennium without an appropriation by law; (2) or in absence of such showing, to require her and her successor to cease and desist from any further disbursements of state funds at the end of the fiscal biennium without an appropriation by law.

Additionally, the Petitioners seek a judgment against the State of Minnesota for the costs of litigation, including attorney fees, because their attorneys are representing them in their official capacity as state legislators on a claim involving the constitutional allocation of powers between the legislative, judicial and executive branches.

INTRODUCTION

The Petitioners seek a resolution from this Court of their constitutional claims under Articles III, IV and XI of the Minnesota Constitution arising from the Commissioner of Finance at the end of the fiscal biennium on June 30, 2005 making expenditures of state funds pursuant to Ramsey County District Court orders. The Petitioners claim that such actions injured them as state legislators because the Respondent's expenditures usurped the state legislative prerogative to appropriate state funds. The Petitioners claim taxpayer standing to challenge Respondent's unconstitutional expenditures and illegal actions as well.

JURISDICTION

1. Jurisdiction of the court over this Petition for Writ of Quo Warranto and ancillary claim for litigation costs, including attorney's fees, is conferred pursuant to Minn. Const. art. VI, Sec. 2, Minn. Stat. Sec. 480.04 (2004) and other applicable authorities. *See also* Order of State Supreme Court, App. 271.

CONSTITUTIONAL PROVISIONS

2. Article IV of the Minnesota Constitution expressly allocates certain powers of government to the Legislative Department.

3. Article III prohibits the Executive Department and Judiciary from exercising the power of the Legislative Department without an express constitutional provision allowing it to do so:

ARTICLE III
DISTRIBUTION OF THE POWERS OF GOVERNMENT

Section 1. DIVISION OF POWERS. The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

4. Article XI of the Minnesota Constitution provides that state funds may only be disbursed pursuant to an “appropriation by law”:

Section 1. Money paid from state treasury. No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

5. Article IV of the Minnesota Constitution provides a list of requirements for an “appropriation by law” to occur. Article IV’s requirements include the state legislature approving the appropriation bill, then presenting the appropriation bill to the Governor who then signs it into law or vetoes the bill (including line item veto) and, if a veto occurs, the state legislature votes to override the veto:

Sec. 23. APPROVAL OF BILLS BY GOVERNOR; ACTION ON VETO. Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. If, after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered in the journal of each house.

Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill. At the time he signs the bill the governor shall append to it a statement of the items he vetoes and the vetoed items shall not take effect. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and the items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor.

Satisfying Article IV's requirements are a prerequisite for an "appropriation by law." An "appropriation by law" is an Article XI prerequisite to the disbursement of state funds.

FACTS

6. The state legislature, as an elected body, appropriates money for the funding of state agencies and programs on a biennial basis.
7. The fiscal year for the State of Minnesota is July 1 to June 30.
8. On May 21, 2001, the Minnesota legislature ended its regular session.
9. On June 11, 2001, then Governor Jesse Ventura convened the Minnesota legislature in special session.
10. On June 21, 2001, Mike Hatch, Attorney General for the State of Minnesota filed a petition and memorandum for an order to show cause with the Ramsey County District Court. App. 1-8, 9-19. The matter was entitled "In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota," Court

File No. C9-01-5725. App. 1. Governor Jesse Ventura filed an amicus curiae brief. App. 20-25.

11. A hearing on the matter was held on June 29, 2001 before then Chief District Court Judge Lawrence D. Cohen and Findings of Fact, Conclusions of Law, and Order granting Attorney General Mike Hatch's petition. App. 26-35.

12. The court ordered, among other things, that core functions of state government be performed, that each state agency, official, county and municipal entity, and school district determine those core functions and verify the performance of such for payment to the Commissioner of Finance and the State Treasurer, and appointed a Special Master. App. 34-35.

13. The Special Master was to mediate, hear, and make recommendations to the Court with regard to any issues arising from the terms or compliance of the court's order. App. 34.

14. The 2001 Ramsey County Court proceeding, for all intents and purposes, ended on June 29, 2001 when the state legislature enacted additional appropriations.

15. On May 23, 2005, the Minnesota legislature ended its regular session after passing ten bills for the appropriation by law of state funds to various state agencies and programs that Governor Tim Pawlenty signed into law except for one appropriation bill he vetoed.

16. On May 24, 2005 Governor Tim Pawlenty convened the Minnesota legislature in special session.

17. On June 15, 2005 Mike Hatch, Attorney General for the State of Minnesota filed a petition and memorandum for an order to show cause with the Ramsey

County District Court. App. 36-43, 44-62. Governor Tim Pawlenty also joined in the litigation by filing a petition and motion. App. 86-95, 96-105. The matter was entitled “In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota,” Court File No. C0-05-5928. App. 36.

18. A hearing on the matter was held on June 29, 2005 before Chief Judge Gregg E. Johnson who issued Findings of Fact, Conclusions of Law, and Order granting Attorney General Mike Hatch’s petition. App. 154-165.

19. The court ordered, among other things, that core functions of state government be performed, that each state agency, official, county and municipal entity, and school district determine those core functions and verify the performance of such to the Special Master. App. 165.

20. The Special Master was to determine whether or not the Commissioner of Finance should pay for the performance of certain core functions. App. 165.

21. The court further ordered the appointment of a Special Master (referee) to mediate, hear, and make recommendations to the Court with regard to any issues arising from the terms or compliance of the court’s order. App. 165.

22. From time to time thereafter, from about June 30, 2005 to July 7, 2005, various agencies, programs, and individuals, including individual legislators, filed petitions with the court; such as the Minnesota Council of Airports, App. 227-28; the Department of Natural Resources, App. 189-190; Metro Transit, App. 179-180; the Ramsey County Board of Commissioners, App. 219-220; the Greater Twin Cities United Way, App. 199-200; the Minnesota Housing Partnership, App. 225-26; the Minnesota Council of Nonprofits, App. 175-76; the Minnesota Trucking Association and Minnesota

Manufactures Homes Association, App. 205-06; Joe Pazandak, App. 181-182; Senator W. Skoglund, App. 222-23; and the Special Master made determinations as recommendations to the Ramsey County Chief Judge on what constituted core functions and therefore should be funded through the Commissioner of Finance.

23. On June 30, 2005 and July 7, 2005 Ramsey County Chief Judge Gregg E. Johnson issued orders affirming the recommendations of the Special Master. App. 193-195; 196-198; 215-216; 217-218.

24. Commencing on or about July 1, 2005 the Respondent Commissioner of Finance disbursed state funds pursuant to the Ramsey County District Court Orders totaling \$569,623,962.00 – but without an “appropriation by law.” App. 275.

25. On or about June 30, 2005, Petitioner State Senator Tom Neuville offered an amendment to pending legislation seeking to fund “core and essential” services of state government and employ the number of employees needed to carry out these functions, for a period of 30 days from the date of enactment and allow funds to be appropriated from the general fund to the Commissioner of Finance as long as the expenditures did not exceed Minnesota fiscal year 2005 levels. App. 260. The amendment was defeated by vote of the Senate.

26. By July 14, 2005, the Minnesota legislature had passed seven bills for the appropriation by law of state funds all of which the Governor signed -- completing its biennial appropriations for the funding of all state agencies and programs.

27. The Ramsey County District Court file entitled “In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota,” No. C0-05-5928, is still pending in Ramsey County District as Pro Se Petitioner Ryan P. Winkler, Esq. has

a scheduled hearing before the Hon. Steven D. Wheeler on October 6, 2005 on his application for intervention based on the unconstitutionality of the Ramsey County District Court enjoining the Commissioner of Finance to disburse state funds without an appropriation by law. App. 234-241; 257.

28. On or about August 31, 2005 Petitioners filed a Petition for a Writ of Quo Warranto before the Minnesota Supreme Court against Peggy Ingison, in her official capacity as Commissioner of Finance.

29. On September 9, 2005 the Minnesota Supreme Court issued an order directing the Petitioners to file their petition for a Writ of Quo Warranto action with the District Court. App. 271.

30. On or about August 23, 2005, Petitioners' attorneys wrote to the Attorney General Mike Hatch requesting appointment as "special counsel" regarding Petitioners' action for a Writ of Quo Warranto before the State Supreme Court. App. 262.

31. On or about August 24, 2005, the Attorney General denied Petitioners' attorneys request. App. 253

32. Minn. Stat. Sec. 8.06 states that "the attorney general may, upon request in writing, employ, and fix the compensation of, a special attorney for any such board, commission, or officer when, in the attorney general's judgment, the public welfare will be promoted thereby."

33. Minn. Stat. Sec. 8.06 also states that the Attorney General "shall act as the attorney for all state officers and all boards or commissioners created by law in all matters pertaining to their official duties."

34. Petitioners, in their capacity as state legislators, are state officials and through this petition seek to adjudicate issues that will promote the public welfare.

35. Petitioners are entitled under Minn. Stat. Sec. 8.06 to have funded, competent counsel to litigate questions of law in court that would result in promotion of the public welfare.

36. A constitutional conflict between the branches of government has arisen as a direct result of the disbursement of funds from the state treasury without “an appropriation by law.” It is in the public interest and promotion of the public welfare that this constitutional conflict be resolved.

37. The Attorney General through his letter of August 24, 2005 acted in an arbitrary and capricious manner and was unreasonable in his decision to deny the appointment of special counsel for the Petitioners asserting, among other things, that Petitioners filing of a petition for a Writ of Quo Warranto would be done so in “bad faith.” App. 256.

38. Petitioners found it necessary to engage counsel to initiate, promote, and litigate the constitutional claims asserted in the instant action in a court of law, on behalf of themselves and the citizens of the State of Minnesota. Petitioners claim they are entitled to a state court judgment for all litigation costs – including attorneys’ fees.

39. The Petitioners seek a judgment against the State of Minnesota for the costs of litigation, including attorney fees, because their attorneys are representing them in their official capacity as state legislators.

CONSTITUTIONAL CLAIM

40. The allegations of the foregoing paragraphs are incorporated in their entirety herein by reference.

41. The Court has jurisdiction over this petition and should grant the Writ of Quo Warranto to the Commissioner of Finance.

42. The Petitioners have standing as state legislators and/or as taxpayers to bring their claim. The Petitioners claim that such actions injured them as state legislators because the Respondent's expenditures usurped the state legislative prerogative to appropriate state funds and nullified their "no" votes and/or inaction on appropriation bills not enacted prior to the Respondent's unconstitutional expenditures. As taxpayers, the Petitioners challenge Respondent's unconstitutional expenditures and illegal actions.

43. Petitioners' claims are not moot because they are capable of repetition, yet evade review. Additionally, the Petitioner's claims are not moot because they are functionally justiciable and of statewide importance.

44. Article III of the Minnesota Constitution provides for the separation of powers between the legislative, executive, and judicial branches of government with specific powers granted to each branch.

45. Article XI, Section 1 of the Minnesota Constitution is unambiguous, "no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law."

46. Article IV of the Minnesota Constitution provides the legislature with exclusive authority to make "appropriations by law."

47. The Respondent violated Article XI of the Constitution by disbursing money from the state treasury pursuant to Ramsey County District Court orders rather than an appropriation by law.

48. The Respondent unconstitutionally usurps the state legislative prerogative to appropriate state funds by disbursing money out of the treasury without an “appropriation by law” enacted pursuant to Article IV of the Minnesota Constitution.

PRAYER FOR RELIEF

The Petitioners seek two forms of relief from the Court. First, for the foregoing reasons and as argued below in the memorandum of law, the Petition for Writ of Quo Warranto should be granted and the requested writ of quo warranto should be issued.

Second, for the foregoing reasons, the Court should issue a judgment against the State of Minnesota awarding all litigation costs including attorney’s fees to the Petitioners.¹

¹ The memorandum of law does not address Petitioner’s claims for litigation costs because it only addresses the arguments relating to the issuance of the writ of quo warranto and the proposed hearing related thereto. Petitioners anticipate additional proceedings pertaining to the claim for litigation costs and expressly do not waive this or any other claims by not addressing them in the memorandum of law contained herein.

MEMORANDUM OF LAW

The Petitioners make the following arguments in support of their petition for issuance of a writ of quo warranto.

ARGUMENT

I. THE PETITIONERS HAVE STANDING TO BRING THEIR CONSTITUTIONAL CLAIMS.

The Petitioners have standing as legislators and as taxpayers to bring their claims of illegal expenditures against Respondent.

A. THE PETITIONERS HAVE STANDING AS LEGISLATORS.

Minnesota courts have acknowledged that state legislators may bring claims for vote nullification and usurpation of legislative powers. *See Rukavina v. Pawlenty*, 684 N.W.2d 525, 532 (Minn.App. Aug 03, 2004), *review denied* (Oct 19, 2004); *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 149-150 (Minn.App. Dec 21, 1999), *review denied* (Mar 14, 2000). For legislators to have standing, they must show that their claimed injury is "personal, particularized, concrete, and otherwise judicially cognizable." *Conant*, 603 N.W.2d at 150 (citing *Raines v. Byrd*, 521 U.S. 811, 820 (1997)). "Cases considering legislator standing generally fall into one of three categories: lost political battles, nullification of votes and usurpation of power." *Silver v. Pataki*, 96 N.Y.2d 532, 539, 755 N.E.2d 842, 730 N.Y.S.2d 482, 2001 N.Y. Slip Op. 06138 (N.Y. Jul 10, 2001) (vote nullification). "Only circumstances presented by the latter two categories confer legislator standing." *Id.* at 539, *citing Coleman v. Miller*, 307 U.S. 433, 59 S.Ct. 972, 83 L.Ed. 1385 (vote nullification); *Dodak v. State Admin. Bd.*, 441 Mich. 547, 495 N.W.2d 539 (usurpation of power belonging to legislative body).

The U.S. Supreme Court in *Coleman* found standing for individual legislators who claimed that their “no” votes were nullified by the legislative act being given effect anyway. There, the Court held that Kansas state legislators who had been locked in a tie vote that would have defeated the State's ratification of a proposed federal constitutional amendment, and who alleged that their votes were nullified when the Lieutenant Governor broke the tie by casting his vote for ratification, had "a plain, direct and adequate interest in maintaining the effectiveness of their votes." *Id.*, at 438 (emphasis added).² The U.S. Supreme Court in *Raines v. Byrd*, 521 U.S. 811, 822 (1997) restated the *Coleman* holding and further explained that legislative standing existed when legislators' no votes were nullified by the legislative act being given effect anyway.

The New York Court of Appeals in *Silver v. Pataki*, 96 N.Y.2d 532, 755 N.E.2d 842, 730 N.Y.S.2d 482, 2001 N.Y. Slip Op. 06138 (N.Y. Jul 10, 2001) held that the Speaker of New York's General Assembly had capacity and standing as a legislator to bring suit seeking to vindicate his rights as a legislator. The Speaker's successful challenge was based on the Governor using the line item veto on non-appropriation bills. The Court stated that a single legislator had standing on a vote nullification claim:

Nor is a controlling bloc of legislators (a number sufficient to enact or defeat legislation) a prerequisite to plaintiff's standing as a Member of the Assembly. The *Coleman* Court did not rely on the fact that all Senators casting votes against the amendment were plaintiffs in the action (*see, Kennedy v. Sampson, supra*, 511 F.2d,

² The U.S. Supreme Court in *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 544-545, n. 7 (1986)(dicta), also recognized legislative standing based on vote nullification. The Court stated, “It might be an entirely different case if, for example, state law authorized School Board action solely by unanimous consent, in which event Mr. Youngman might claim that he was legally entitled to protect “the effectiveness of [his] vot[e].” *Coleman v. Miller*, 307 U.S. 433, 438 (1939). . . But in that event Mr. Youngman would have to allege that his vote was diluted or rendered nugatory under state law and even then he would have a mandamus or like remedy against the Secretary of the School Board . . .” 475 U.S. at 544, 545, n. 7 (citations omitted).

at 435 ["In light of the purpose of the standing requirement * * * we think the better reasoned view * * * is that an individual legislator has standing to protect the effectiveness of his vote with or without the concurrence of other members of the majority"]). Moreover, plaintiff's injury in the nullification of his personal vote continues to exist whether or not other legislators who have suffered the same injury decide to join in the suit.

Id. at 848-49.

Similarly, the Michigan Supreme Court in *Dodak v. State Admin. Bd.*, 441 Mich. 547, 495 N.W.2d 539 (1993) held that a single member of the state house appropriations committee had standing to bring an action alleging that the state administrative board's transfer of appropriated funds from one program to another within a department of state government was unauthorized.

According to these precedents, the Petitioners have legislator standing under two categories. First, the Petitioners have standing because of vote nullification. Vote nullification exists under *Coleman* and its progeny because the Petitioners through their "no" votes and or legislative inaction did not enact appropriations by law. Despite the lack of appropriations enacted by the state legislature, the Commissioner of Finance expended the state funds anyway. The Commissioner of Finance's actions -- admittedly pursuant to Ramsey County District Court orders³ -- violated the Petitioner's exclusive legislative prerogative to appropriate state funds.

Second, the state legislators have standing because the Commissioner of Finance and Ramsey County District Court usurped the exclusive legislative prerogative to

³ However, the Commissioner of Finance should not have immediately followed the Court orders. She could have either intervened in the court proceedings and sought review of the constitutional issues raised herein or waited until state appropriations were enacted. For example, the Commissioner of Finance routinely waits to honor state court judgments against the state until the state legislature enacts appropriations to pay the judgment creditors. App. 258.

appropriate state funds. Since the Ramsey County District Court orders were not an “appropriation by law” – not valid appropriations -- the Commissioner of Finance was required constitutionally not to expend the state funds. She did -- usurping a power allocated to the state legislature under Articles III, IV and XI of the Constitution.

Additionally, the Petitioners also allege injury because the Commissioner of Finance and the Ramsey County District Court proceedings and orders unconstitutionally tipped the balance of powers in favor of the executive and judiciary branch at the expense of the legislative branch – at a critical juncture in budget negotiations. The legislature’s power to appropriate funds is its paramount power and its leverage in budget negotiations. When the executive and judiciary branches usurped the power of appropriation, they unconstitutionally deprived the legislature of its power and leverage at the negotiating table.

For these reasons, the Petitioners have standing as legislators to bring their claims of unconstitutional expenditures against the Respondent.

B. THE PETITIONERS HAVE STANDING AS TAXPAYERS.

“[I]t is well settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys; to recover for the use of the public subdivision entitled thereto money that has been illegally disbursed, as well as to restrain illegal action on the part of public officials.” *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977) (citation omitted). “[I]t has been generally recognized that a taxpayer has sufficient interest to enjoin illegal expenditures of both municipal and state funds.” *Arens v. Village of Rogers*, 240 Minn. 386, 392, 61 N.W.2d 508, 513 (1953).

[T]axpayers have the right “to maintain an action in the courts to restrain the unlawful use of public funds.” *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. App. 1999).

The Court in *McKee v. Likins*, 261 N.W.2d 566 (Minn. 1977) recognized the well-settled doctrine that taxpayer standing existed to challenge illegal expenditures. The issue in *McKee* was whether taxpayer standing -- “injury in fact” -- existed where the expenditure of tax monies was made under a rule which the plaintiff taxpayer alleged was adopted by a state official without compliance with the statutory rule-making procedures. The Court held that taxpayer standing existed and that the expenditures were illegal for lack of following statutory procedure:

An important political issue like public financing of abortions ought to, ideally, be decided by the legislature where everyone can have his say. If the legislature has placed the issue in the hands of an administrative official that official's decision ought to be based on a careful expression of all interested viewpoints. . . Therefore, it logically follows that if the legislature delegates authority to an administrative agency and if the administrative agency elects to adopt rules pursuant to that authority, the procedure outlined in the Administrative Procedure Act should be followed in promulgating those rules.

261 N.W.2d at 578.

Similarly, the Petitioners have standing because they are challenging expenditures made by the Commissioner of Finance without following constitutional procedures. This Petition specifically alleges that the Commissioner of Finance is violating Articles III, IV and XI of the Minnesota Constitution by making expenditures without an appropriation by law. These allegations satisfy the *McKee* requirements for taxpayer standing.

For these reasons, the Petitioners have standing as taxpayers to bring their claims of unconstitutional expenditures against the Respondent.⁴

II. THE COURT SHOULD EXERCISE ITS JURISDICTION OVER THE PETITION FOR WRIT OF QUO WARRANTO.

The District Court should exercise jurisdiction over the petition for writ of quo warranto for the following reasons.

A. THE COURT HAS JURISDICTION OVER THE PETITION FOR WRIT OF QUO WARRANTO.

The Minnesota Supreme Court has “original jurisdiction in such remedial cases as are prescribed by law.” Minn. Const. art. VI, § 2. Minnesota statutes provide:

The [supreme] court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, 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. It shall be always open for the issuance and return of such writs and processes and for the hearing and determination of all matters involved therein. . .

Minn. Stat. § 480.04. However, the Minnesota Supreme Court has directed the Petitioners to file in the District Court first. App. 271.

In the past, Minnesota Courts have exercised jurisdiction in quo warranto proceedings to determine the right to an office which turned on the scope of a constitutional officer’s constitution-granted power or the constitutionality of certain legislative acts. *See, e.g., State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986); *State v. ex rel. Palmer v. Perpich*, 182 N.W.2d 182 (1971); *State ex rel. Douglas*

⁴ Neither is Petitioners’ standing negated by the doctrine of laches or waiver by failure to somehow undo the state funds unconstitutionally expended by the Respondent. *See Pataki v. New York State Assembly*, 7 A.D.3d 74, 774 N.Y.S.2d 891, 2004 N.Y. Slip Op. 02980 (N.Y.A.D. 3 Dept. Apr 22, 2004) (NO. 91757) (Governor’s failure to exercise veto power did not deprive him of standing or effect waiver of his right to challenge constitutionality of defendants’ actions).

v. Westfall, 89 N.W. 175 (1902); *State ex rel. Getchell v. O'Conner*, 83 N.W. 498 (1900); *State ex rel. Douglas v. Ritt*, 79 N.W. 535 (1899).

Originally, a writ could only be issued upon the petition of the attorney general *ex officio*. See, e.g., *State ex rel. Danielson v. Village of Mound*, 48 N.W.2d 855, 860 (1951). As the law involving writs of quo warranto evolved, private persons were also permitted, at the discretion of the Court, to file a petition for writ of quo warranto. *State ex rel. Simpson v. Dowlan*, 24 N.W. 188, 189 (1885). While the consent of the attorney general was initially required in cases initiated by private persons, the Minnesota Supreme Court has held that a writ could be issued, in its discretion, even though the attorney general had not consented to the writ. See *Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992); *Town of Burnsville v. City of Bloomington*, 117 N.W.2d 746 (1962); *State ex rel. Town of Stuntz v. City of Chisholm*, 264 N.W. 798 (1936). Consequently, private individuals and entities may seek a writ of quo warranto with or without the consent of the attorney general.

Counsel for Petitioners sought an attorney general appointment as special counsel for this proceeding, but it was denied on August 24, 2005. App. 253-56. Nevertheless, this proceeding is much the same as a proceeding brought by the attorney general in his *ex officio* capacity. This Petition is brought by the Petitioners in their *ex officio* capacity as state legislators.

The public interest factors which compel this Court to exercise jurisdiction in quo warranto proceedings brought by the attorney general in his *ex officio* capacity are present in this proceeding. This case involves the constitutional division of powers between the legislative, executive and judicial branches. The three branches of state

government daily use their power and respect the powers of the other branches. For example, the Commissioner of Finance routinely waits to honor state court judgments against the state until the state legislature enacts appropriations to pay the judgment creditors. App. 258. However, in this instance, the executive and judicial branches in a pre-meditated fashion have usurped powers reserved for the legislative branch – preventing the state legislature from doing its constitutional duties.

The issues in this proceeding are suitable for this Court to resolve on a petition for writ of quo warranto because they are constitutional and legal questions. *See Matter of Johnson*, 358 N.W.2d 469 (Minn. App. 1984); *State ex rel. Law v. District Court of Ramsey County*, 150 N.W.2d 18, 19 (1967) (writ of prohibition will normally issue only where all essential facts are undisputed); *Minneapolis Star & Tribune Co. v. Schmidt*, 360 N.W.2d 433, 434 (Minn. App. 1985) (where constitutional issues may be involved, a writ of prohibition is proper). There are no known disputed issues of material fact.

Further, the issues presented in the writ of quo warranto reflect that time is of the essence. The Court should exercise its jurisdiction to ensure the case is resolved prior to the end of the next biennium on June 30, 2007 – so each of the three branches of government know what to do.

For these reasons, the Court should exercise its jurisdiction over the Petition for Writ of Quo Warranto.

B. THE CLAIMS ARE NOT MOOT BECAUSE THEY ARE CAPABLE OF REPETITION, BUT EVADE REVIEW.

Mootness is "a flexible discretionary doctrine, not a mechanical rule that is invoked automatically." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn.2002) (*citing State v. Rud*, 359 N.W.2d 573, 576 (Minn.1984)). The court will

dismiss a case as moot if the court is unable to grant effectual relief. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. Aug 11, 2005), *citing In re Schmidt*, 443 N.W.2d 824, 826 (Minn.1989). The court will deem a case not moot if it implicates issues that are capable of repetition, yet likely to evade review. *Kahn*, 701 N.W.2d 815, 821, *citing Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn.1980).

The U.S. Supreme Court has determined that the “capable of repetition yet evading review” doctrine is “limited to the situation where two elements are combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975).

The Kentucky Supreme Court in *Fletcher v. Commonwealth of Kentucky*, 163 S.W.3d 852 (Ky. May 19, 2005) applied the “capable of repetition yet evading review” doctrine in a case with remarkably similar facts – a perennially deadlocked budgeting process case. The Kentucky Supreme Court held that mootness did not apply:

On three occasions within a ten-year period, the General Assembly convolved itself into a partisan deadlock and adjourned *sine die* without enacting an executive department budget bill. After the two most recent such occasions, the respective governors promulgated their own budgets and ordered appropriations drawn from the treasury in accordance therewith. On each occasion, lawsuits were filed to test the constitutionality of those actions. On each occasion, the General Assembly enacted an executive department budget bill and ratified the governor's actions before the issue could be finally resolved by the Court of Justice. **Having no assurance that similar partisan brinkmanship will not recur in the General Assembly, resulting in future gubernatorially promulgated budgets, we conclude that this issue is capable of repetition, yet evading review, and will address its merits.** See *Burlington Northern R. Co. v. Bhd. of Maint. of Way Employees*, 481 U.S. 429, 436 n. 4, 107 S.Ct. 1841, 1846 n. 4, 95 L.Ed.2d 381 (1987) (“Because these same parties are reasonably likely to find themselves again in dispute over the issues raised in this petition, and because such disputes typically are resolved quickly by ... legislative action, this controversy is one that

is capable of repetition yet evading review.").

Fletcher, 163 S.W.3d at 859 (emphasis added). Similarly, the Petitioners' claims satisfy the two requirements for application of "capable of repetition, yet evade review" doctrine.

The first requirement that "the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration" is satisfied. Both the 2001 and 2005 Ramsey County District Court proceedings were too short to allow for full litigation of the constitutional issues involved. The 2001 Ramsey County District Court proceeding lasted less than ten days before legislative appropriations were made. The 2005 Ramsey County District Court proceeding lasted approximately thirty days before legislative appropriations were made – although Ryan P. Winkler's motion to intervene is still pending. Thirty days is a blink in the eye of a litigator – certainly not enough time for serious briefing and court analysis of the constitutional claims (including appellate review) present in this case.

The second requirement that "there was a reasonable expectation that the same complaining party would be subjected to the same action again" is also satisfied. As in the *Fletcher* case, Minnesota voters have chosen divided government – one political party controlling the state legislature and another political party having the governor's office. Rightly or wrongly, the state legislature in two of the last four years has adjourned without enacting certain, necessary appropriation bills. Since the Court can not be assured that Minnesotans won't continue to vote for divided government and that there won't be more adjournments without enacting certain necessary appropriation bills in the future, the Court should conclude – as the Kentucky Supreme Court did – that there is a

reasonable expectation that the state legislature, the Commissioner of Finance and the Ramsey County District Court will find themselves in the same position on June 30, 2007 – the end of the next biennium.

Additionally, the Minnesota Supreme Court has stated that it will not deem a case moot and will retain jurisdiction if the case is "functionally justiciable" and is an important public issue "of statewide significance that should be decided immediately." *State v. Brooks*, 604 N.W.2d 345, 347-48 (Minn.2000). The facts of this case satisfy the requirements of *Brooks*. The case is functionally justiciable because this Court has jurisdiction over this proceeding and the parties and has an available remedy -- the writ of quo warranto. The case is of statewide significance because it addresses the allocation of powers of the state government between the legislative, executive and judicial branches.⁵

For these reasons, the Court should find that the Petitioners' claims are not moot because they are capable of repetition, but evade review.

III. THE PETITIONERS SHOULD PREVAIL ON THEIR CONSTITUTIONAL CLAIMS.

When considering constitutional provisions, the Minnesota Supreme Court has "repeatedly observed that it is [its] task to give effect to the clear, explicit, unambiguous and ordinary meaning of the language" of the Constitution. *Rice v. Connolly*, 488 N.W.2d 241 (Minn. Jul 31, 1992), citing *State ex rel. Gardner v. Holm*, 62 N.W.2d 52, 55 (1954). If the language of the provision is unambiguous, it must be given its literal meaning--there is neither the opportunity nor the responsibility to engage in creative construction. See, e.g., *Village of McKinley v. Waldor*, 170 N.W.2d 430, 433 (1969)

⁵ Another indication of casewise significance is that the *Star Tribune* and *St. Paul Pioneer Press* ran August 25, 2005 articles on the state legislators' constitutional claims prior to filing their petition for writ of quo warranto.

(citations omitted). The Court has stated its canons for interpretation of constitutional provisions:

The rules governing the courts in construing articles of the State Constitution are well settled. The primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and people in adopting the article in question. If the language used is unambiguous, it must be taken as it reads, and in that case there is no room for construction. The entire article is to be construed as a whole, and receive a practical, common sense construction. It should be construed in the light of the social, economic, and political situation of the people at the time of its adoption, as well as subsequent changes in such conditions.

State ex rel. Chase v. Babcock, 220 N.W. 408, 410 (1928).

The Petitioners assert that Articles III, IV and XI of the Minnesota Constitution are unambiguous regarding the exclusive legislative prerogative to appropriate state funds. Because these provisions are unambiguous, the Court should give them their literal meaning and find that the Commissioner of Finance acts unconstitutionally by expending money without an appropriation by law enacted by the state legislature.

First, the Commissioner of Finance's expenditures violated Article III. Article III is unambiguous. Article III's literal meaning prohibits the Executive Department and Judiciary from exercising the power of the Legislative Department without an express constitutional provision allowing it to do so. Article III states:

The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

The Commissioner of Finance acting pursuant to a Ramsey County District Court order usurped a legislative prerogative in violation of Article III by making expenditures without an appropriation by law enacted by the state legislature.

Throughout its history, the Minnesota Supreme Court has jealously guarded the constitutional division of powers. In *State v. Brill*, 111 N.W. 639, 640-41 (1907), Justice Elliott described at length the history of the doctrine of separation of powers with its limits on the executive and judiciary branches as well as the legislative branch:

The tendency to sacrifice established principles of constitutional government in order to secure centralized control and high efficiency in administration may easily be carried so far as to endanger the very foundations upon which our system of government rests. That system, devised and elaborated with infinite care and wide knowledge of history and political theory, rests upon certain conceded fundamental principles. The structure which was erected is not simple. It is complex; the parts interrelated and dependent. It was deliberately framed and adopted for the purpose of effecting a change from the system which prevailed on the continent of Europe and to a certain extent in the colonies, and which had earnest and skillful advocates among political writers such as John Milton in England, Turgot in France, and Franklin in America, who argued for a sovereign legislative body, in which all political power should be vested. But the people were not willing to trust everything to a single person or collection of persons. They had heard that a wise and benevolent despot is the best of all possible rulers, but they had learned that rulers are not always wise and benevolent. A single legislative body, with full control over executive and judicial action, was to their minds as full of possible danger as a single despotic ruler. They were unwilling to trust any man or body of men with the uncontrolled exercise of all the powers of government.

Constitution making began with the states and culminated in the Constitution of the nation. The idea that the powers of the government should be distributed among different bodies of men had taken possession of the minds of the statesmen and people of the formative period. They were familiar with the contrary theory, and with the works of the political writers in which such theories were advocated. But they believed, with Paley, that 'the first maxim of a free state is that the law should be made by one set of men and administered by another; in other words, that the legislative and judicial character be kept separate. When these offices were united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from particular motives and directed to private ends. Whilst they are kept separate, general laws are made by one body of men without foreseeing whom they may affect; and, when made, they must be applied by the other, let them affect whom they will.' They had read in Montesquieu's *Spirit of Laws* that 'when the legislative powers are united in the same person or in the same body of magistrates there can be no liberty. * * * Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of

the subjects would be exposed to arbitrary control, for the judge would be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything were the same man or body * * * to exercise these powers, that of executing the public resolutions and that of trying the causes of individuals.' Their Blackstone taught them that 'in this distinct and separate existence of the judicial power in a peculiar body of men, nominated, indeed, by, but not removable at, the pleasure of the crown, consists the one main preservative of public liberty, which cannot long subsist in any state unless the administration of common justice be in some degree separated from the legislative and executive power.' Paley's Moral Philosophy, bk. 6, c. 8; Montesquieu, Spirit of Laws, bk. 2, c. 6; Blackstone, Comm. bk. 4, p. 140. In speaking of the old Constitution of Virginia, Jefferson said: 'All the powers of government, legislative, executive, and judicial, result to the legislative body. The concentrating these in the same hands is the precise definition of a despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands and not a single one.' Jefferson, Notes on Virginia, p. 195; Story, Const. Law, vol. 1, § 525.

111 N.W. at 640-41.

The concerns about potential abuse of governmental power⁶ led to the division of powers among the three, co-equal branches of government under the Constitution. The framers thought that the separation of powers were so important that they expressly defined and defended the separation of powers in Article III. It is in this same spirit of the Framers, that the Court should interpret Article III to define and defend the separation of powers to protect the legislative branch from the executive branch and judicial branch encroachments in this case.

Second, the Commissioner of Finance's expenditures violate Article XI of the Minnesota Constitution. Article XI is unambiguous. Article XI literally means that state funds can only expended in pursuance of an "appropriation by law." Article XI states:

⁶ An example of a potential abuse of power to be avoided in this case is the Ramsey County District Court establishing the statewide judiciary budget – including the trial judge's own salary – and then ordering the Commissioner of Finance to pay it.

Section 1. Money paid from state treasury. No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

The phrase “appropriation by law” is unambiguous. The phrase literally means appropriation by “law” enacted under Article IV of the Constitution. The phrase “appropriation by law” does not include court orders. Since the Commissioner of Finance was paying money from the state treasury pursuant to a Ramsey County District Court order – not an appropriation by law -- she was violating Article XI’s ban on such payments from the state treasury.

Third, the Commissioner of Finance’s expenditures also violate Article IV of the Minnesota Constitution. Article IV is unambiguous. Article IV literally provides a list of requirements for an “appropriation by law” to occur. Article IV’s literal requirements include the state legislature approving the appropriation bill, then presenting the appropriation bill to the Governor who then signs it into law or vetoes the bill (including appropriation line item veto) and, if a veto occurs, the state legislature voting to override the veto. Article IV states:

Sec. 23. APPROVAL OF BILLS BY GOVERNOR; ACTION ON VETO. Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. If, after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered in the journal of each house. Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the governor during the three days

following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill. At the time he signs the bill the governor shall append to it a statement of the items he vetoes and the vetoed items shall not take effect. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and the items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor.

The actions of the Commissioner of Finance paying money out of the state treasury pursuant to a Ramsey County District Court order violates Article IV because the state legislature did not pass the appropriation bill, the appropriations bill was not presented to the Governor and no appropriation bill was enacted. For a lawful expenditure to occur, the appropriation bill must be passed by the state legislature, presented to the Governor and enacted as law by the Governor signing it or by a legislative veto override.

The Commissioner of Finance is constitutionally required to wait until an appropriation by law is enacted prior to paying money out of the state treasury. Since she failed to do so in this case, she has unambiguously violated Articles III, IV and XI of the Constitution.

CONCLUSION

For the foregoing reasons, the Court should grant this petition and issue the writ of quo warranto.

Dated: 9/28, 2005



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Attorneys for Petitioners

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

AFFIDAVIT OF PERSONAL SERVICE

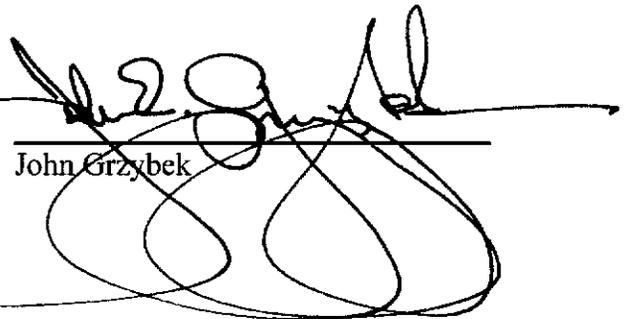
John Grzybek, of the City of Minneapolis, County of Hennepin, State of Minnesota, being duly sworn, says that on the 28th day of September, 2005, I personally served Mike Hatch and Peggy Ingison with a true and correct copy of the following:

- 1) PETITION FOR WRIT OF QUO WARRANTO;
- 2) APPENDIX OF EXHIBITS FOR PETITION FOR WRIT OF QUO WARRANTO;
- 3) PROPOSED ORDER FOR HEARING;
- 4) INFORMATIONAL STATEMENT.

At the following addresses:

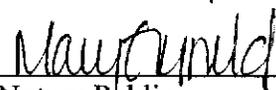
Mike Hatch
Attorney General
State of Minnesota
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St. Paul, MN 55101-2128

Peggy Ingison
Department of Finance
4th Floor, Centennial Building
658 Cedar Street
St. Paul, MN 55155



John Grzybek

Subscribed and sworn to before me this
28th day of September, 2005.



Notary Public



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

State of Minnesota ex rel. Speaker of House
of Representatives Hon. Steve Sviggum,
Majority Leader Hon. Erik Paulsen, State
Representatives Hon. Paul Kohls,
Hon. Scott Newman, Hon. Mark
Buesgens, Hon. Tim Wilkin, Hon. Chris
DeLaForest, Hon. Duke Powell, Hon. Kurt
Zellers, Hon. Matt Dean, Hon. Jim Knoblach,
Hon. Jeff Johnson and Hon. Philip Krinkie,
and State Senators Hon. Tom Neuville,
Hon. Michele Bachmann, Hon. Sean Nienow,
Hon. David Hann, Hon. Warren Limmer,
Hon. Mady Reiter, and Hon. David Senjem,
in their capacity as State Legislators and individually,

Case No. _____

Petitioners,

vs.

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

Respondents.

**APPENDIX OF EXHIBITS FOR
PETITION FOR WRIT OF QUO WARRANTO**

VOLUME 1 OF 2

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STATE OF MINNESOTA

FILED
Court Administrator

DISTRICT COURT

COUNTY OF RAMSEY

JUN 21 2001

SECOND JUDICIAL DISTRICT

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota)
)
)
)
)

By  Deputy

Case Type: Civil

Court File No. 09-01-5725

PETITION

035136

Attorney General Mike Hatch petitions the Court as follows:

PARTIES

1) Petitioner is the duly elected Attorney General of the State of Minnesota. In this capacity he has the authority under the Minnesota Constitution, Minnesota statutes and Minnesota common law to represent the State and its interests in all matters before the Court. He also represents the people of the State in a *parens patriae* capacity.

2) The Governor is entrusted under Article V, Section 3 of the Minnesota Constitution to ensure that the laws of the State are executed. He has extensive authority under the common law and under Minnesota Statutes Chapter 4 and elsewhere.

3) In addition, the Executive Branch is composed of five other duly elected Constitutional Officers as specified in Article V of the Constitution of the State of Minnesota. These Officers include the Secretary of State, who has authority to regulate the conduct of elections and to accept and keep records relating to the filing of documents under the Uniform Commercial Code and other statutes; the State Auditor, who is charged with the duties of supervising and managing the fiscal concerns of the State and has audit authority over local political subdivisions of the State and other entities; the State Treasurer, who has authority and

responsibility to receive and process deposits of public monies and other duties as provided by law; and the Attorney General, who is authorized to represent the legal interests of the State in courts and elsewhere; and the Lieutenant Governor.

4) County governments are charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal government. County governments receive funds from the state and federal government to perform these core functions.

5) School districts of the State of Minnesota are charged under federal and state law to perform certain core functions on behalf of state and federal government. The school districts receive funds from the state and federal government to perform these core functions.

6) Municipal subdivisions of the State of Minnesota are charged under federal and state law to perform certain core functions on behalf of the state and federal government. The municipal subdivisions receive funds from the state and federal government to perform these core functions.

7) The following Public Officials serve in a variety of capacities on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government:

- 1) David Fisher, Department of Administration,
- 2) Gene Hugoson, Department of Agriculture,
- 3) Christine Jax, Department of Children, Families and Learning,
- 4) James Bernstein, Department of Commerce,
- 5) Cheryl Ramstad Hvass, Department of Corrections,
- 6) Earl Wilson, Department of Economic Security,

- 7) Julien Carter, Department of Employee Relations,
- 8) Pamela Wheelock, Department of Finance,
- 9) Jan Malcolm, Department of Health
- 10) Janeen Rosas, Department of Human Rights,
- 11) Michael O'Keefe, Department of Human Services,
- 12) John Swift, Iron Range Resources and Rehabilitation Board,
- 13) Gretchen Maglich, Department of Labor and Industry,
- 14) Major General Eugene Andreotti, Department of Military Affairs,
- 15) Alan Garber, Department of Natural Resources,
- 16) Charles Weaver, Department of Public Safety,
- 17) Matthew Smith, Department of Revenue,
- 18) Rebecca Yannish, Department of Trade and Economic Development,
- 19) Elwyn Tinklenberg, Department of Transportation,
- 20) Jeffrey Olson, Department of Veterans Affairs,
- 21) Karen Studders, Minnesota Pollution Control Agency,
- 22) Dean Barkley, Department of Planning,
- 23) Morris Anderson, Chancellor, Minnesota State Colleges and Universities,
and
- 24) Howard Bicker, Executive Director, State Board of Investment.

8) In addition to the above Public Officials, there are a variety of occupational and licensing boards, regulatory boards, mediation bureaus, minority affairs counsels, and other commissions which act on behalf of state government and may perform core functions.

9) The United States Attorney is charged to represent the federal government and its interests as it relates to certain services being performed by the state and local government on its behalf.

10) For purposes of this Petition the parties described in paragraphs 2 - 9 above, are referred to as "Government Entities."

11) Jurisdiction in this action is based upon Chapter 484 of Minnesota Statutes. Venue is appropriate in this district under Minn. Stat. § 542.01 (2000).

FACTUAL AND PROCEDURAL BACKGROUND

12) Article XI, Section 1 of the Minnesota Constitution provides that "no money shall be paid out of the treasury of this State except in pursuance of an appropriation by law." Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota Government to operate. The State of Minnesota has not enacted a state budget for the fiscal year beginning July 1, 2001.

13) The Government Entities are required to perform certain services which have been identified as "core or inherent" functions which cannot be abridged by the Legislative Branch. Some of these core functions are identified under the Minnesota Constitution. Other core functions are identified in the United States Constitution. Yet other core functions are mandated by the federal government pursuant to the Supremacy Clause of the United States Constitution.

14) STATE CONSTITUTION: Core functions Of Executive Branch: For instance, the Minnesota Constitution imposes a variety of core functions upon the six Constitutional Officers which may not be abridged by the Legislative Branch. See *State ex. rel. Mattson vs. Kiedrowski*, 391 NW. 2nd 777 (Minn. 1986). The first mandate set forth in the Minnesota

Constitution is that “government is instituted for the security, benefit and protection of the people, in whom all political power is inherent...” Article I, Section 1. The Governor has responsibility to protect life, liberty and property by the collection of revenue, by ensuring maintenance and security of government property such as parks, buildings and roads, and by protecting the citizens’ rights under the Bill of Rights as set forth in the State Constitution. Similarly, the State Treasurer has independent responsibility to protect government property by the receipt, care and disbursement of state monies. The State Auditor has independent responsibility to protect government property by auditing the books and records of the government. The Secretary of State has responsibility to protect private property by administration of the Uniform Commercial Code and to protect liberty through administration of the election laws. The Attorney General has responsibility to protect government property and preserve liberty and life through legal representation of the government.

15) U.S. CONSTITUTION: Core functions of Executive Branch: In addition, the 14th Amendment of the United States Government mandates that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” Pursuant to this provision the Government Entities are required to perform certain core functions of government to protect life, liberty and property. The Office of Management and Budget (“OMB”) and the United States Attorney General have used, with regard to a federal government shutdown, the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

16) Pursuant to the above criteria, the OMB determined that the following activities, among others, are core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

17) STATE CONSTITUTION: Education Funding: In addition, the Minnesota Constitution requires that the State provide a "general and uniform system of public school." This provision requires that the State mandate and finance an "adequate" level of education that is uniformly available to all students. Some of the Government Entities are responsible for providing such a core function of government.

18) FEDERAL MANDATES AND AGREEMENTS: Supremacy Clause of U.S. Constitution: In addition, the Supremacy Clause of the United States Constitution requires that the State of Minnesota perform certain core functions of the government pursuant to enter governmental compact, agreement or congressional mandate. In many instances the State of Minnesota has agreed to undertake certain administrative duties on behalf of or in concert with the federal government. Such core functions include, but are not limited, administration and payment of medical assistance, general assistance and a variety of federal and government programs designed to assure for the safety and welfare of its citizens. Pursuant to the Supremacy

Clause, these core functions of government must be administered by the Government Entities and paid for by the State of Minnesota.

19) The Commissioner of Finance and the State Treasurer administer the payment of obligations of the State of Minnesota.

20) The State Treasury contains ample funds to continue the operation of the core functions of government after June 30, 2001.

Wherefore, Petitioner seeks the following relief:

1) A declaration that, pursuant to the separation of powers doctrine of the Minnesota Constitution, the Executive Branch of State Government must undertake such core functions as required by the Minnesota State Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and that the State of Minnesota shall pay for such services.

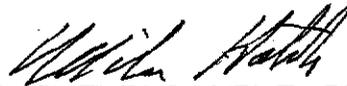
2) An Order that the Commissioner of Finance and the Minnesota State Treasurer shall issue checks and process such funds as necessary to pay for such obligations of the State of Minnesota.

3) An Order that each of the Government Entities shall, consistent with the terms of this Order, determine what core functions are required to be performed by it. Each Government Entity shall verify the performance of such services to the Commissioner of Finance and the State Treasurer, who shall pay for such services until such further Order of the Court.

4) An Order that a Special Master be appointed by the Court to resolve any issues relating to the definition of core functions and the payment of them. That the State of Minnesota shall pay the reasonable fees of the Special Master.

Dated: June 20, 2001

Respectfully submitted,



MIKE HATCH
Attorney General
State of Minnesota

AG: 488696, v. 01

BILLED
File # 09-01-3725
Date 6-22-01
Fee Amount \$ 122
County _____ State _____
Deputy L. Naas
Invoice # 002343

5

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

JUN 26 2001

By lg Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

In re Interim Funding for Certain
Governmental Functions of the
Executive Branch of the State of
Minnesota

Court File No. C9-01-5725

**PETITIONER'S MEMORANDUM IN
SUPPORT OF MOTION FOR RELIEF**

INTRODUCTION

Petitioner Mike Hatch, the Attorney General of the State of Minnesota, brings this action seeking to have this Court direct that the core functions of the executive and judicial branches of government shall continue to be performed after June 30, 2001, even if funds are not appropriated on or before that date.

FACTUAL BACKGROUND

A budget impasse presently exists with respect to state funding, and monies have not been appropriated for the fiscal year beginning July 1, 2001. Without such appropriations, state government and local governmental units may not be able to carry out their responsibilities,¹ including their core functions. Petitioner requests this Court to direct state and local government officials and governmental units (hereinafter "government entities") to continue to carry out their core functions and to authorize the payment for such functions.

¹ This is due to the provisions of Article II, Section 1 of the Minnesota Constitution which states that "[n]o money shall be paid out of the treasury of this state except in pursuance of an appropriation by law."

ARGUMENT

The requested relief should be granted for a number of reasons. First, under the Minnesota Constitution, the core functions of the executive and judicial branches of government cannot be terminated by failure of another branch of government to appropriate funds. Second, citizens of Minnesota are entitled to certain rights and privileges under both the United States and Minnesota Constitutions that cannot be guaranteed if the executive and judicial branches are unable to carry out their core functions. Third, many government entities receive federal funding in connection with federal programs carried out by such entities. Such programs require regular payments and the continued participation by the government entities. The Supremacy Clause of the United States Constitution mandates that participation in such programs by State and local government continues regardless of the budget process at the state or local level. Finally, this Court has inherent judicial authority to direct the expenditure of state funds to maintain a sufficient level of judicial branch operations for the judiciary to meet its constitutional obligations.

The relief requested is limited and temporary in nature. The relief sought would only permit the continued operation of the core functions of the government entities as required by the United States and Minnesota Constitutions. Further, the relief requested is limited in duration and will remain in effect, at most, until July 23, 2001.

I. THE CORE FUNCTIONS OF THE GOVERNMENT ENTITIES CANNOT BE TERMINATED BY ANOTHER BRANCH GOVERNMENT.

The Minnesota Supreme Court has held that the legislative branch may not eliminate, transfer, or fail to fund core functions of government officers whose existence is set forth in the Minnesota Constitution. See *State ex rel Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). At issue in *Mattson* was an act of the legislature which transferred most of the responsibilities of

the State Treasurer to the Commissioner of Finance. *Id.* at 778. The Legislature did not abolish the State Treasurer's position, but rather transferred to the Commissioner of Finance most of the State Treasurer's functions, including the receipt and disbursement of state funds.

The Minnesota Supreme Court held that the failure of the legislature to appropriate funds to the State Treasurer so that he could carry out the core functions of his office was unconstitutional. The court noted that Article III of the Minnesota Constitution discusses the distribution of the power of state government as follows:

The power of government shall be divided into three distinct departments: legislative, executive and judicial. No power or persons belonging to or constituting one of these departments shall exercise any of the power properly belonging to either of the others except in the instances expressly provided in this constitution.

Id. at 780. The court further noted that while Article V of the Minnesota Constitution provides that "[t]he duties and salaries of the executive offices shall be prescribed by law," that article does not authorize legislation that strips an office of all its independent core functions. Because the legislative act at issue stripped the State Treasurer of his duties over the receipt, care and disbursement of state monies - functions that constitute the very core of the Office of the State Treasurer - the court found the act to be unconstitutional. *Id.* at 782 - 783.

Mattson applies with equal force to this present case. First, in *Mattson*, the Supreme Court noted that even though certain functions of the State Treasurer were preserved, the office "now stands as an empty shell." Here, without appropriated funds after June 30, 2001, the Governor, other executive branch officials, and the judiciary will essentially have no ability to operate and will effectively be nullified. The absence of funding will "strip [the executive branch and judiciary offices] of all [their] independent core functions" as certainly as the legislative enactment did in *Mattson*.

Second, the *Mattson* decision recognizes that the Minnesota Constitution provides that the Office of State Treasurer has certain inherent powers even if those powers are not expressly set forth in the constitution. As the court noted, Section 4 of Article V of the Minnesota Constitution simply states: “the duties and salaries of the executive officers *shall be prescribed by law.*” *Id.* at 780 (emphasis added). Even with this express declaration in the Constitution that the Treasurer’s duties were to be *prescribed by law*, meaning by legislative enactment, the Court held that there were implicit limits on the legislature’s powers. Thus, the separation of powers doctrine prevents one branch of government from exercising its authority (or failing to exercise its ability) to override the inherent authority of the other branches of government. Similarly, here, the executive officers and the judiciary have functions inherent in their that cannot be eliminated by legislative action or inaction.

The *Mattson* decision is consistent with decisions in other states. *See, e.g., Williams v. State Legislature of the State of Idaho*, 111 Idaho 156, 722 P.2d 465 (1986) (legislature cannot eliminate core functions of state auditor simply by not appropriating funds for that function); *Morris v. Glover*, 49 S.E. 786 (Ga. 1905) (legislature cannot expressly abolish office of county treasurer and cannot accomplish the same result by transferring its duties to another office).

It is clear that the absence of appropriated funds cannot terminate the provision of the core functions of the executive and judicial branches. Accordingly, the requested relief should be granted.

II. FAILURE TO FUND THE GOVERNMENT ENTITIES’ CORE FUNCTIONS WILL DEPRIVE MINNESOTA CITIZENS OF RIGHTS GUARANTEED BY THE UNITED STATES AND MINNESOTA CONSTITUTIONS.

Minnesota citizens are guaranteed a wide variety of rights under both the United States and Minnesota Constitutions. Among other things, they are entitled to due process of law and to

the protection of their life, liberty, and property. They are further guaranteed certain rights as defendants in criminal trials and the right to redress of injuries or wrongs in state courts. See U.S. Constitution, Amendment V (the right to due process before deprivation of life, liberty or property; the prohibition against taking private property for public use without compensation); Amendment VI (the right to speedy trial and counsel); and the Minnesota Constitution, Article I, sec. 6 (the right to speedy trial and counsel); Article I, sec. 7 (the right to due process before deprivation of life, liberty or property); and Article I, sec. 8 (the right to prompt legal remedy for injuries and wrongs).

It is well-settled that states cannot abridge or ignore the constitutional rights of their citizens simply because the legislature has not appropriated money to meet those constitutional obligations. In *Watson v. City of Memphis*, 373 U.S. 526, 83 S. Ct. 1314 (1963) the Supreme Court reviewed a lower court's decision ordering the City of Memphis to immediately desegregate its public parks and other recreational facilities. As one of its defenses, the city claimed that it should be given more time to desegregate because a number of the recreational facilities would have to be closed because of the inadequacy of the present park budget. The Supreme Court rejected this justification for delay by noting that "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them." *Id.* at 537, 83 S. Ct. at 1321. The lack of resources defense has been rejected in other contexts. See *Barker v. Wingo*, 407 U.S. 514, 531, 92 S. Ct. 2182, 2192 (1972) (delays in criminal justice process may violate defendants' due process rights, and overcrowded courts are not a defense); *Harris v. Champion*, 15 F.3d 1538, 1562-63 (10th Cir. 1994) (neither lack of funding for public defender system, or mismanagement of resources by public defender constitute acceptable excuses for lengthy delays in adjudicating

direct criminal appeals); *Williams v. Bennett*, 689 F.2d 1370, 1387-88 (11th Cir. 1982) (“Defendants clearly may not escape liability [for an Eighth Amendment violation] solely because of the legislature’s failure to appropriate requested funds. . . . If . . . a state chooses to operate a prison system, then each facility must be operated in a manner consistent with the Constitution”); *Gates v. Collier*, 501 F.2d 1291, 1320 (5th Cir. 1974) (“shortage of funds is not a justification for continuing to deny citizens their constitutional rights.”)

In protecting the constitutional rights of citizens where funding is an issue, courts have even gone so far as to order tax increases. See *Stell v. Board of Public Education for the City of Savannah and the County of Chatham*, 724 F. Supp. 1384, 1405 (S.D. Ga. 1988) (federal court has broad equitable powers to remedy evils of desegregation, including a narrowly defined power to order an increase in local tax levies on real estate, after exploration of every other fiscal alternative), citing *Liddell v. State of Missouri*, 731 F.2d 1294, 1320 (8th Cir.), cert. denied, 469 U.S. 816 (1984). (See *Welsch v. Likins*, 550 F.2d 1122 (8th Cir. 1977); *Jackson v. Bishop*, 404 F.2d 571, 580 (8th Cir. 1968).

Here, performance of the core functions of the government entities assure that the constitutionally guaranteed rights of Minnesota citizens continue to be protected. The absence of funding does not eliminate the existence of these rights. It is therefore appropriate that the court provide the relief requested to assure that constitutional protections continue to be afforded to the citizens of this State.

III. THE STATE MUST CONTINUE TO PARTICIPATE IN FEDERAL PROGRAMS WHICH REQUIRE STATE FUNDING.

The State has entered into a variety of agreements with the federal government pursuant to which federal programs carried out by the State and local governments. Such programs include those providing public and medical assistance to needy persons and those encompassing

certain transportation and highway construction projects. In addition to federal funding, these programs require a certain level of state funding under the federal laws establishing such programs.

The Supremacy Clause of the United States Constitution, Article VI, Cl. 2, makes the United States Constitution and federal laws the supreme law of the land governing anything to the contrary in state laws or state constitutions. *Testa v. Katt*, 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967 (1947). As a result, the Supremacy Clause requires that payments be made and programs continue under the applicable federal laws regardless of whether any state appropriation has been made in connection with such programs. In numerous cases involving budget impasses and public assistance payments, courts have ordered such payments to be continued despite the lack of any appropriation by the legislature. See *Coalition for Basic Human Needs v. King*, 654 F.2d 838, 841 (1st cir. 1981); *Pratt v. Wilson*, 770 F. Supp. 539, 543-44 (E.D. Cal. 1991) (after State Department of Social Services sent letter to county welfare directors advising that state would not release AFDC funds, either state or federal, after July 1, 1990 absent enactment of a state budget, court ruled that cutting off such funds would violate federal law and could not be done); *Coalition for Economic Survival v. Deukmejian*, 171 Cal. App. 3d 954, 957 (Cal. App. 2 Dist. 1985) (interim stay ordering state to refrain from withholding AFDC payments during budget impasse).

Of particular note is the case of *Knoll v. White*, 595 A.2d 665 (Pa. Comwlth. Court 1991). At issue in that case was a provision in the Pennsylvania Constitution pertaining to appropriations which is virtually identical to that contained in the Minnesota Constitution. When no appropriations were made by the Pennsylvania legislature due to a budget impasse, the Pennsylvania State Treasurer sought a declaratory order regarding the legality of continued

payment of public assistance payments and benefits. The *Knoll* court held that under the Supremacy Clause and federal law, Pennsylvania was required to continue making payments with respect to federally-based programs, including aid for dependent children, refugee cash assistance, food stamps, and medical assistance. The court held that the federal mandate, being supreme over the state constitutional requirement for appropriations authorization, required the continuation of such payments. *Id.* at 668.

In light of these holdings, the government entities that participate in certain federal programs related to their core functions must continue to make payments and operate such programs.

IV. THIS COURT HAS INHERENT JUDICIAL RESPONSIBILITY TO MAINTAIN AN APPROPRIATE LEVEL OF FUNDING FOR THE MINNESOTA COURT SYSTEM.

Minnesota courts and courts in other states have recognized the inherent responsibility of courts to provide themselves adequate funding to enable them to carry out their duties. The leading Minnesota case on inherent judicial authority regarding fiscal issues is *Clerk of Courts Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 786 (1976). In *Lyon County*, the judges of the Fifth Judicial District had issued a direct *ex parte* order setting the minimum annual salary of the clerk of district court of Lyon County at a specific level, higher than that set by the Lyon County Commissioners. The Minnesota Supreme Court reversed the judge's order for failing to comply with a statutorily set procedure for judges to question the salaries set by county commissioners. However, the court articulated the principles governing the use of inherent judicial powers is follows:

- (1) Inherent judicial power grows out of express and implied constitutional provisions mandating a separation of powers and a viable judicial branch of government. It comprehends all authority necessary to preserve and improve the fundamental judicial function of deciding cases.

(2) Inherent judicial power is available to courts on all levels to be used consistent with respective jurisdictions and functions. Of course, review of an exercise of such inherent power by district courts and other inferior courts is available in this court in accordance with established procedures.

(3) Inherent judicial power may not be asserted unless constitutional provisions are followed and established and reasonable legislative-administrative procedures are first exhausted. Intragovernmental cooperation remains the best means of resolving financial difficulties in the face of scarce societal resources and differences of opinion regarding judicial procedures.

(4) While established and reasonable procedures have failed, an inferior court may assert its inherent judicial power by an independent judicial proceeding brought by the judges of such court or other parties aggrieved. Such a proceeding must include a full hearing on the merits in an adversary context before an impartial and disinterested district court. That court shall make findings of fact and conclusions of law in accordance with the standards set forth in this opinion and may grant appropriate relief.

(5) The test to be applied in these cases is whether the relief requested by the court or aggrieved party is necessary to the performance of the judicial function is contemplated in our state constitution. The test is not relative needs or judicial wants, but practical necessity in performing the judicial function. The test must be applied with due consideration for equally important executive and legislature functions.

Id. at 182, 241 N.W.2d at 786.

The exercise of inherent judicial power is appropriate here. First, appropriations have been sought through the legislative process. While those efforts have not been successful to date, due deference has been paid to the other branches of government.

Second, the procedures set forth in *Lyon County* are being followed. An impartial and disinterested party is hearing the matter, and an opportunity to be heard has been provided to a wide range of persons and government entities.

Finally, funds are simply necessary for the courts to operate and protect the constitutional rights of the citizenry. Federal and state courts ensure that criminal defendants are afforded certain rights, including speedy trials. In addition, the Minnesota Constitution provides that "every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may

receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.” Article I, Section 8. If criminal defendants are not provided speedy trials and if the civil courts of the State of Minnesota are unable to operate, the rights of Minnesotans guaranteed under the United States and Minnesota Constitution will be violated.

The courts in Minnesota are not unique in recognizing that they may have to exercise their inherent power to compel payment of their operating expenses. Indeed, in certain instances, such responsibility has been broadly applied by the judicial branch to establish the overall budget of the court. *See, e.g., Carlson v. State ex rel. Stodola*, 220 N.E.2d 532 (Ind. 1966); *Gary City Court v. City of Gary*, 489 N.E. 511 (Ind. 1986); *Mower v. Rusk*, 618 P.2d 886 (N. Mex. 1980); *Matter of 1987 Essex County Judicial County Impasse*, 533 A.2d 961 (N.J. 1987); *McCain v. Grant Parish Police Jury*, 440 So.2d 1369 (La. App. 3d Cir. 1983); *Beckert v. Warren*, 439 A.2d 638 (Pa. 1981); *Commonwealth ex rel. Carroll v. Tate*, 274 A.2d 193 (Pa. 1971).

Judges are unique amongst state officials in that the Minnesota Constitution itself specifically requires that they continue to be paid even if there is no specific appropriation for their pay. Article VI, Section 5 of the Minnesota Constitution provides in relevant part that “[t]he compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office.” This provision is an express prohibition against withholding salary from judges for budgetary or other reasons. *See Op. Atty. Gen.*, 141-D-7, December 22, 1971 (statute providing that judges shall not be paid travel expenses for travel from place of residence to and from permanent chambers would in effect reduce amount of reimbursable expense during term of judges already elected and could not constitutionally be applied to such judges).

In light of the above, it is clear that the judicial branch has both the power and the responsibility to ensure that the judicial system and its officers are appropriately funded.

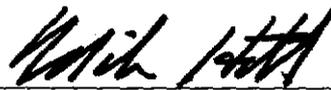
CONCLUSION

For the above reasons, it is appropriate for the Court to direct that the core functions of the executive and judicial branches of government continue to be performed and that payments be made for the performance of such functions.

Dated: June 21, 2001

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota



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ATTORNEY FOR PETITIONER

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota

Court File No. C9-01-5725

FILED
Court Administrator

JUN 28 2001

By CAJ Deputy

Memorandum Amicus Curiae
on behalf of The Honorable
Jesse Ventura, Governor of
the State of Minnesota

By Order of the Court dated as of June 21, 2001, the Governor of the State of Minnesota, and the various state commissioners of the State of Minnesota, are directed to show cause why the Court should not grant the motion of Petitioner, Minnesota Attorney General Mike Hatch, to declare that the core functions of government be undertaken, and directing further actions, after June 30, 2001.

In a June 21, 2001 service letter to various government entities, Petitioner, Minnesota Attorney General Mike Hatch, invited each entity to file a written memorandum with the court regarding the proposed motion. On behalf of all state government agencies, boards, commissions, councils, offices and task forces under the jurisdiction of the Governor of the State of Minnesota, The Honorable Jesse Ventura respectfully submits this memorandum in support of the motion of Petitioner, and to further advise of certain actions that he has taken and may yet take.

The Attorney General of the State of Minnesota has sought the Court's order essentially authorizing certain "core" functions of the State to continue after June 30, 2001, even in the absence of an appropriation therefore approved by the Minnesota State Legislature. As set forth

in the Petition, the State Legislature has not yet appropriated such funds for many state government functions, and there exists an imminent threat that government funding and related state government operations will cease commencing on July 1, 2001, the beginning of the new fiscal year for the State of Minnesota. As stated, the Governor of the State of Minnesota, and each of the agencies, boards, commissions, councils, offices and task forces under the jurisdiction of the Governor of the State of Minnesota, support the Petition.

During the course of the last several weeks, the Governor has carefully considered the potential impact of cessation of state government operations on citizens of the State, as well as on the ability to maintain facilities, property and other assets of the State. In conversations with the Office of the Attorney General, it was determined that efforts be made to define the "core" functions of state government based upon analysis expressed by the Minnesota Supreme Court in the case of *State ex rel Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). In that case, the Court determined the "core" functions of the Office of Treasurer of the State of Minnesota.

While the Governor recognizes the authority established by the Supreme Court in the *Mattson* case, he recognizes as well that its application to the full breadth of state government, including its various statutory agencies, boards, commissions, councils, offices and task forces, it is less than perfectly clear. Under the circumstances, the Governor determined to analyze government operations. In order to assure the orderly planning and process that may be necessary in preparation for a government shutdown as of July 1, 2001, and to provide guidance to government entities and state personnel, the Governor commenced plans to continue only those operations that appeared to have clear direction under the State Constitution and existing statute.

Accordingly, the Governor has relied upon certain inherent powers under the Minnesota State Constitution. Pursuant to Article V, Section 3, the Governor is directed to "take care that the laws be faithfully executed." In the context of this case, it is the Governor's position that after June 30, 2001, the laws of the State of Minnesota requiring the protection of the health and safety of persons, and the prevention of catastrophic loss to property or the environment, shall continue to be observed and upheld, despite lack of direct appropriation.

Furthermore, additional clarifying authority is contained in Chapter 12, Minnesota Statutes, relating to Emergency Management. Pursuant to Minn. Stat. §12.36, the Governor, during a disaster, may enter into certain contracts, incur certain obligations, exercise certain other powers in light of the exigencies of the disaster, and require that necessary funds be encumbered. Pursuant to Minn. Stat. §12.03, subd. 2, the term "disaster" means

A situation that creates an actual or imminent serious threat to the health and safety of persons, or a situation that has resulted or is likely to result in catastrophic loss to property or the environment, and for which traditional sources of relief and assistance within the affected area are unable to repair or prevent the injury or loss.

The Governor views this statutory authority as a vehicle by which to maintain the continued operations of the critical or essential functions of government in the event of a shutdown. Accordingly, the Governor could enter into such contracts, and incur such obligations, as may be necessary to prevent the "actual or imminent serious threat to the health

and safety of persons, or a situation that has resulted or is likely to result in catastrophic loss to property or the environment . . . ".

While the tenor of Chapter 12 as a whole could lead one to conclude that it is only applicable in the event of a natural disaster, in the relief of local jurisdictions of government, this is not necessarily the only interpretation. The terms "disaster" and "natural disaster," for instance, are not used interchangeably under Chapter 12. Minn. Stat. §12.221 refers specifically to "natural disaster assistance" as clearly a subset of the definition, above, used for the term "disaster." Minn. Stat. §12.02, subd. 1, uses the term "natural and other disasters." Thus, it may be concluded that the Governor can invoke the powers of Minn. Stat. §12.36 under an executive order so as to give effect the policy declaration set forth in Chapter 12.

Pursuant to such provisions, the Governor has determined it appropriate for a temporary commitment of state resources to incur obligations for critical state services. Should the provisions of Minn. Stat. §12.36 be applicable, then the power to incur obligations carries with it the power as well to issue warrants and secure payment for such obligations. Because Chapter 12 permits the Governor to encumber funds, without reference to statutory appropriations, the appropriation authority is therefore inherent within the ability to encumber debt for these critical services.

The Governor fully understands that these provisions of the Constitution and statute have not been so applied previously in state history. The State of Minnesota has not faced the serious prospect of a government shutdown in state history. We nevertheless must take action to the maximum extent provided by law to assure that the general health and welfare of the citizens, and critical state institutions and facilities, are preserved. It is with this intent in mind that the

Governor has directed state agencies, boards, commissions, councils, offices and task forces under the jurisdiction of the Governor of the State of Minnesota, to take steps necessary to maintain and continue their critical functions, under the definition set forth in Minn. Stat. §12.03, subd. 2.

Nevertheless, it continues to be the view of the Governor that the clear declaration and order of a court having jurisdiction of the matter would be preferable to any untested interpretation of law; and we support the Petitioner's continued efforts in this regard.

Attached for the consideration of the Court is a listing of the "critical" functions of state government identified to date by the Governor based upon submissions by, and interviews with, the various agencies, boards, commissions, councils, offices and task forces under the jurisdiction of the Governor of the State of Minnesota. The list sets forth those functions of state government that the Governor believes should remain operational after June 30, 2001, even in the absence of direct appropriation by the Minnesota State Legislature. The "critical" functions of the offices of the other Constitutional Officers are not included in Appendix A. Governor Ventura does not presume to speak on behalf of the other Constitutional Officers but rather he believes that they should have the opportunity to directly accept the Petitioner's invitation to address the court in regard to the motion.

Certain other functions of state government also will remain operational, being essentially those functions funded by the United States government or through the use of various special revenue funds or revolving accounts established by the Minnesota State Legislature without the need for new direct appropriations. These functions therefore do not rely on direct appropriations for the 2002-2003 fiscal year.

For the above reasons, The Honorable Jesse Ventura, Governor of the State of Minnesota, states his support for the Petition filed by Attorney General Mike Hatch, and submits this Memorandum to the Court for its further consideration of those functions of government that are critical to life, health and safety of citizens, and to the preservation of state government assets.

Dated: 6-28-01

Respectfully submitted,


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GENERAL COUNSEL FOR
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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

Court File No. C9-01-5725

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
MOTION FOR TEMPORARY FUNDING**

On June 21, 2001, this Court issued an Order to Show Cause setting a hearing date of June 29, 2001 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2001. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. At the hearing on June 29, 2001 appearances were made by Attorney General Mike Hatch and Chief Deputy Attorney General Alan I. Gilbert on behalf of Petitioner. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.

2. The Minnesota Legislature ended its regular session this year on May 21, 2001 without approving appropriations for nearly all of the executive branch officers and agencies for

the fiscal year beginning on July 1, 2001. On June 11, 2001 Governor Jesse Ventura convened the legislature in special session. The special session has not resulted in any appropriations for the executive branch officers and agencies.

3. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the six executive branch Constitutional Officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

4. The following Public Officials appointed by the Governor serve in a variety of capacities in the executive branch of government on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government:

- 1) David Fisher, Department of Administration,
- 2) Gene Hugoson, Department of Agriculture,
- 3) Christine Jax, Department of Children, Families and Learning,
- 4) James Bernstein, Department of Commerce,
- 5) Cheryl Ramstad Hvass, Department of Corrections,
- 6) Earl Wilson, Department of Economic Security,
- 7) Julien Carter, Department of Employee Relations,
- 8) Pamela Wheelock, Department of Finance,
- 9) Jan Malcolm, Department of Health
- 10) Janeen Rosas, Department of Human Rights,

- 11) Michael O'Keefe, Department of Human Services,
- 12) John Swift, Iron Range Resources and Rehabilitation Board,
- 13) Gretchen Maglich, Department of Labor and Industry,
- 14) Major General Eugene Andreotti, Department of Military Affairs,
- 15) Allen Garber, Department of Natural Resources,
- 16) Charles Weaver, Department of Public Safety,
- 17) Matthew Smith, Department of Revenue,
- 18) Rebecca Yannish, Department of Trade and Economic Development,
- 19) Elwyn Tinklenberg, Department of Transportation,
- 20) Jeffrey Olson, Department of Veterans Affairs,
- 21) Karen Studders, Minnesota Pollution Control Agency,
- 22) Dean Barkley, Department of Planning,
- 23) Morris Anderson, Chancellor, Minnesota State Colleges and Universities,
- 24) Howard Bicker, Executive Director, State Board of Investment,
- 25) Katherine G. Hadley, Housing Finance Agency,
- 26) Ted Mondale, Chair, Metropolitan Council,
- 27) Richard Scherman, State Board of Public Defense, and
- 28) David S. Paull, Board on Judicial Standards.

5. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of occupational and licensing boards, regulatory boards, mediation bureaus, minority affairs counsels, and other commissions which act on behalf of state government and perform core functions.

6. Local governmental units such as counties, municipalities and school districts are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the state to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid. School districts will be unable to carry out this core function without the State continuing to make timely payments to the school districts.

7. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2001, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

8. Examples of the federal programs referenced in paragraph 7 include the following welfare programs: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for

which they were eligible. *See* 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S.C. § 1396a(a)(10) and (9). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c.

9. Due to the lack of legislative appropriations, the six Constitutional Officers of the State of Minnesota, the executive branch agencies, and the local units of Minnesota government, have insufficient funds to carry out all of their core functions as of July 1, 2001. Any failure to properly fund core functions of the executive branch would have severe consequences for the citizens of Minnesota.

10. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

11. Pursuant to the criteria referenced in paragraph 10 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;

- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

12. The State of Minnesota is not facing a budget crisis. The State has ample reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2000) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2000).

3. -Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate.

4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to

fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that "government is instituted for the security, benefit and protection of the people" Article I, Section 1. Minnesota citizens are guaranteed under both the United States and Minnesota Constitutions the right to due process before deprivation of life, liberty or property. U.S. Const. Amendments III and IV; Minn. Const., Article I, Section 7. Minnesota citizens are guaranteed a wide range of rights under the Bill of Rights in both constitutions. U.S. Const. Amendments I-X; Minnesota Const. Article I. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2001.

7. The Minnesota Constitution requires that the State provide an adequate education through a "general and uniform system of public schools." Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, Aid to Families with Dependent Children and other similar welfare or social service programs, and the Section 8 housing program. Under these agreements continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. By way of example, core functions include, but are not limited to, the provision of healthcare to patients in state-run facilities and programs and the funding of patient care and services in local government or private facilities or programs, such as hospitals, nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services; the State's education system; the application and maintenance of federal and/or State contracted or mandated programs and projects, such as welfare, medical assistance, emergency and housing programs and construction projects; the preservation of safety in state-run facilities; enforcement of laws involving food, drugs, hazardous materials, safety in modes of transportation and state highways (such as the inspection of products and services provided pursuant to construction contracts), the proper provision of healthcare and the integrity of our judicial system; law enforcement, criminal investigations, and prosecutorial and public defender activities; emergency and disaster assistance; activities that ensure the continued production of power, maintenance of the power distribution system, and telecommunications systems; protecting the state and federal constitutional rights of Minnesota citizens; care of prisoners and others in the custody of the government; protection and maintenance of lands, buildings, waterways, transport property, equipment and other property owned or leased by the state government; activities essential to the preservation of the elements of the financial system of the State, including revenue collection, borrowing, payment of debts, compliance with bond and similar

requirements, maintenance of pensions, retirement programs and investment of state and retirement assets and prompt payment of amounts owed to employees, vendors, and contractors.

ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. The Minnesota Commissioner of Finance, Pamela Wheelock, and the Minnesota Treasurer, Carol Johnson, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.

3. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Commissioner of Finance and the State Treasurer, who shall pay for such services.

4. Esther Tomljanovich is hereby appointed as a Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

5. This Order shall be effective until the earliest of the following:

- a. July 23, 2001;
- b. The enactment of a budget by the State of Minnesota to fund the core functions of government after June 30, 2001; or

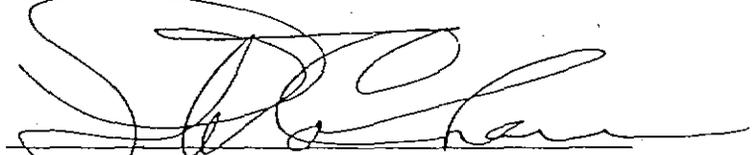
c. Further Order of this Court.

6. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

- a. The Honorable Jesse Ventura, Governor of the State of Minnesota,
- b. The Honorable Don Samuelson, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Pamela Wheelock, Commissioner of Finance,
- e. The Honorable Carol Johnson, Minnesota State Treasurer, and
- f. The Honorable Robert Small, Acting U.S. Attorney for the District of Minnesota.

7. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

BY THE COURT:



The Honorable Chief Judge Lawrence D. Cohen

Dated this 29th day of
June, 2001.

AG: 488383.v. 01

STATE OF MINNESOTA

DISTRICT COURT

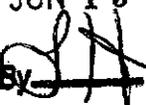
COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In Re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota

FILED
Court Administrator

JUN 15 2005

By  Deputy

Case Type: Civil

Court File No. CO-05 5928

PETITION

Attorney General Mike Hatch petitions the Court as follows:

PARTIES

1) Petitioner is the duly elected Attorney General of the State of Minnesota. In this capacity he has the authority under the Minnesota Constitution, Minnesota statutes and Minnesota common law to represent the State and its interests in all matters before the Court. He also represents the people of the State in a *parens patriae* capacity.

2) The Governor is entrusted under Article V, Section 3 of the Minnesota Constitution to ensure that the laws of the State are executed. He has extensive authority under the common law and under Minnesota Statutes Chapter 4 and elsewhere.

3) County governments are charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal government. County governments receive funds from the state and federal government to perform these core functions.

4) School districts of the State of Minnesota are charged under federal and state law to perform certain core functions on behalf of state and federal government. The school districts receive funds from the state and federal government to perform these core functions.

5) Municipal subdivisions of the State of Minnesota are charged under federal and state law to perform certain core functions on behalf of the state and federal government. The

municipal subdivisions receive funds from the state and federal government to perform these core functions.

6) The State of Minnesota has not adopted a budget for many executive branch agencies for Fiscal Year 2006. The legislature has appropriated funds for some of the executive branch officials and agencies. *See* Act of May 26, 2005, ch. 107 (Higher Education Finance bill); Act of June 2, 2005, ch. 136 (Omnibus Public Safety bill); and Act of June 3, 2005, ch. 156 (State Government Finance bill). A complete list of agencies which have and have not been funded can be found at a Website established by the Minnesota Department of Employee Relations (<https://extranet.doer.state.mn.us/shutdown/Default.htm>). That list is provided to the Court as Exhibit 1 to the Affidavit of Mike Hatch. The following Public Officials serve in a variety of capacities on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government. The agencies headed by these Officials have not been funded.

- 1) Gene Hugoson, Department of Agriculture,
- 2) Alice Seagren, Department of Education,
- 3) Glenn Wilson, Department of Commerce,
- 4) Matt Kramer, Department of Employment and Economic Development,
- 5) Dianne Mandernach, Department of Health,
- 6) Kevin Goodno, Department of Human Services,
- 7) Sandy Layman, Iron Range Resources and Rehabilitation Board,
- 8) Scott Brener, Department of Labor and Industry,
- 9) Gene Merriam, Department of Natural Resources,
- 10) Sheryl Corrigan, Minnesota Pollution Control Agency,

- 11) Tim Marx, Housing Finance Agency,
- 12) Michael Campion, Public Safety (partially funded),
- 13) Carol Molnau, Transportation.

7) In addition to the above Public Officials, there are a variety of boards, commissions and the like which act on behalf of state government and may perform core functions.

8) The United States Attorney is charged to represent the federal government and its interests as it relates to certain services being performed by the state and local government on its behalf.

9) For purposes of this Petition, the parties described in paragraphs 2-8 above are referred to as "Government Entities."

10) The State and local agencies perform core functions of government, which include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. By way of example, core functions include, but are not limited to, the provision of healthcare to patients in state-run facilities and programs and the funding of patient care and services in local government or private facilities or programs, such as hospitals, nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services; the State's education system; the application and maintenance of federal and/or State contracted or mandated programs and projects, such as welfare, medical assistance, emergency and housing programs and construction projects; the preservation of safety in state-run facilities; enforcement of laws involving food, drugs, hazardous materials, safety in modes of transportation and state highways (such as the inspection of products and services provided pursuant to construction contracts), and the proper

provision of healthcare; the integrity of law enforcement activities; emergency and disaster assistance; activities that ensure the continued production of power, maintenance of the power distribution system, and telecommunications systems; protecting the state and federal constitutional rights of Minnesota citizens; care of patients in the custody of the government; protection and maintenance of lands, buildings, waterways, transport property, equipment and other property owned or leased by the state government; activities essential to the preservation of the elements of the financial system of the State, including prompt payment of amounts owed to employees, vendors, and contractors.

11) Jurisdiction in this action is based upon Minn. Stat. § 484.01 (2004). Venue is appropriate in this district under Minn. Stat. § 542.01 (2004).

FACTUAL AND PROCEDURAL BACKGROUND

12) Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this State except in pursuance of an appropriation by law.” Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota Government to operate. The State of Minnesota has not enacted a state budget for many of the Government Entities for the fiscal year beginning July 1, 2005.

13) The Government Entities are required to perform certain services which have been identified as “core or inherent” functions which cannot be abridged by the Legislative Branch. Some of these core functions are identified under the Minnesota Constitution. Other core functions are identified in the United States Constitution. Yet other core functions are mandated by the federal government pursuant to the Supremacy Clause of the United States Constitution.

14) STATE CONSTITUTION: Core functions Of Executive Branch: For instance, the Minnesota Constitution imposes a variety of core functions upon the five Constitutional Officers which may not be abridged by the Legislative Branch. See *State ex. rel. Mattson vs. Kiedrowski*, 391 NW 2nd 777 (Minn. 1986). The first mandate set forth in the Minnesota Constitution is that “government is instituted for the security, benefit and protection of the people, in whom all political power is inherent...” Article I, Section 1. The Governor has responsibility to protect life, liberty and property by the collection of revenue, by ensuring maintenance and security of government property such as parks, buildings and roads, and by protecting the citizens’ rights under the Bill of Rights as set forth in the State Constitution.

15) U.S. CONSTITUTION: Core functions of Executive Branch: In addition, the 14th Amendment of the United States Government mandates that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” Pursuant to this provision the Government Entities are required to perform certain core functions of government to protect life, liberty and property.

16) In 2001 Petitioner petitioned this Court to act to preserve the operation of core functions of the executive branch of government after the Minnesota Legislature had failed to pass a budget funding state government. At that time this Court issued an Order directing that state and local agencies continue to perform the core functions required by the Minnesota and United States Constitutions and by federal law, and that the State continue to pay for such functions performed after July 1, 2001. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order

Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001) (attached to Petitioner's Memorandum in Support of Motion for Relief in this matter). In that Order the Court directed state and local agencies to determine what core functions were required to be performed by each. State executive branch agencies made such determinations, and the list of "critical" operations, listed by agency, which were to remain open in the event of a state government shutdown as of July 1, 2001, is contained in Exhibit 2 to the Affidavit of Mike Hatch submitted in support of this Petition.

17) The Office of Management and Budget ("OMB") and the United States Attorney General have used, with regard to a federal government shutdown, the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

18) Pursuant to the above criteria, the OMB determined that the following activities, among others, are core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Law enforcement and criminal investigations;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities necessary to maintain protection of research property.

19) STATE CONSTITUTION: Education Funding: In addition, the Minnesota Constitution requires that the State provide a "general and uniform system of public school." This provision requires that the State mandate and finance an "adequate" level of education that

is uniformly available to all students. Some of the Government Entities are responsible for providing such a core function of government.

20) FEDERAL MANDATES AND AGREEMENTS: Supremacy Clause of U.S. Constitution: In addition, the Supremacy Clause of the United States Constitution requires that the State of Minnesota perform certain core functions of the government pursuant to enter governmental compact, agreement or congressional mandate. In many instances the State of Minnesota has agreed to undertake certain administrative duties on behalf of or in concert with the federal government. Such core functions include, but are not limited, administration and payment of medical assistance, general assistance and a variety of federal and government programs designed to assure for the safety and welfare of its citizens. Pursuant to the Supremacy Clause, these core functions of government must be administered by the Government Entities and paid for by the State of Minnesota.

21) The Commissioner of Finance administers the payment of obligations of the State of Minnesota.

22) The State Treasury contains ample funds to continue the operation of the core functions of government after June 30, 2005.

23) The Attorney General's Office has been advised that Governor Tim Pawlenty is preparing a list of the core functions of the State executive branch.

Wherefore, Petitioner seeks the following relief:

1) A declaration that, pursuant to the separation of powers doctrine of the Minnesota Constitution, the Executive Branch of State Government must undertake such core functions as required by the Minnesota State Constitution, the U.S. Constitution and

the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and that the State of Minnesota shall pay for such services.

2) An Order that the Commissioner of Finance shall issue checks and process such funds as necessary to pay for such obligations of the State of Minnesota.

3) An Order that each of the Government Entities shall, consistent with the terms of this Order, determine what core functions are required to be performed by it. Each Government Entity shall verify the performance of such services to the Commissioner of Finance, who shall pay for such services until such further Order of the Court.

4) An Order that a Special Master be appointed by the Court to resolve any issues relating to the definition of core functions and the payment of them. That the State of Minnesota shall pay the reasonable fees of the Special Master.

Dated:

June 15, 2005

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota

BILLED

File # _____
Date 6-16-05
Fee Amount \$ 290.00
County _____ State _____
Deputy Hatch
Invoice # 000801

Mike Hatch

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ATTORNEYS FOR PETITIONER

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT

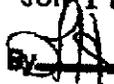
FILED
Court Administrator

SECOND JUDICIAL DISTRICT

JUN 15 2005

Case Type: Civil

In Re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota

By  Deputy

Court File No.
CO 05 5928

**PETITIONER'S MEMORANDUM IN
SUPPORT OF MOTION FOR RELIEF**

INTRODUCTION

Petitioner Mike Hatch, the Attorney General of the State of Minnesota, brings this action seeking to have this Court direct that the core functions of the executive branch of government shall continue to be performed after June 30, 2005, even if funds have not been appropriated on or before that date.

FACTUAL BACKGROUND

A budget impasse presently exists with respect to state funding, and monies have not been appropriated for many of the Departments and agencies of state government for the fiscal year beginning July 1, 2005.¹ Without such appropriations, certain critical agencies in state government and local governmental units may not be able to carry out their responsibilities, including their core functions.² Petitioner requests this Court to direct state and local

¹ See the attached affidavit of Mike Hatch, ¶ 2, and Exhibit 1 for a description of which Departments and agencies have been funded at this point, and which ones have not been funded, according to the Minnesota Department of Employee Relations.

² This is due to the provisions of Article II, Section 1 of the Minnesota Constitution which states that "[n]o money shall be paid out of the treasury of this state except in pursuance of an appropriation by law."

government officials and governmental units (hereinafter "government entities") to continue to carry out their core functions and to authorize the payment for such functions.

ARGUMENT

The requested relief should be granted for a number of reasons. First, under the Minnesota Constitution, the core functions of the executive branch of government cannot be terminated by failure of another branch of government to appropriate funds. Second, citizens of Minnesota are entitled to certain rights and privileges under both the United States and Minnesota Constitutions that cannot be guaranteed if the executive branch is unable to carry out its core functions. Third, many government entities receive federal funding in connection with federal programs carried out by such entities. Such programs require regular payments and the continued participation by the government entities. The Supremacy Clause of the United States Constitution mandates that participation in such programs by State and local government continue regardless of the budget process at the state or local level.

The relief requested is limited and temporary in nature. The relief sought would only permit the continued operation of the core functions of the government entities as required by the United States and Minnesota Constitutions. Further, the relief requested is limited in duration and will remain in effect, at most, until July 23, 2005.

The budget impasse is similar to that which occurred in June 2001. At that time Petitioner sought approval of this Court to maintain the operation of the core functions of the executive and judicial branches of state government.³ This Court granted the relief sought, directing that funding be maintained for core functions of the executive and judicial branches.

³ In 2001 the legislature had not enacted funding bills for the executive or judicial branches. This year funding for the judicial branch was enacted as part of a larger "Public Safety" appropriation bill. Act of June 2, 2005, ch. 136.

See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. C9-01-5725, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D.Ct., June 29, 2001) ("*Executive Branch Core Functions*") and *In Re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, No. C6-01-5911, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D.Ct., June 29, 2001) ("*Judicial Branch Core Functions*"). A copy of the Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding in Executive Branch Core Functions is attached as Exhibit A.

I. THE CORE FUNCTIONS OF THE GOVERNMENT ENTITIES CANNOT BE TERMINATED BY ANOTHER BRANCH GOVERNMENT.

The Minnesota Supreme Court has held that the legislative branch may not eliminate, transfer, or fail to fund core functions of government officers whose existence is set forth in the Minnesota Constitution. See *State ex rel Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). At issue in *Mattson* was an act of the legislature which transferred most of the responsibilities of the State Treasurer to the Commissioner of Finance. *Id.* at 778. The Legislature did not abolish the State Treasurer's position, but rather transferred to the Commissioner of Finance most of the State Treasurer's functions, including the receipt and disbursement of state funds.

The Minnesota Supreme Court held that the failure of the legislature to appropriate funds to the State Treasurer so that he could carry out the core functions of his office was unconstitutional. The court noted that Article III of the Minnesota Constitution discusses the distribution of the power of state government as follows:

The power of government shall be divided into three distinct departments: legislative, executive and judicial. No power or persons belonging to or constituting one of these departments shall exercise any of the power properly belonging to either of the others except in the instances expressly provided in this constitution.

Id. at 780. The court further noted that while Article V of the Minnesota Constitution provides that “[t]he duties and salaries of the executive offices shall be prescribed by law,” that article does not authorize legislation that strips an office of all its independent core functions. Because the legislative act at issue stripped the State Treasurer of his duties over the receipt, care and disbursement of state monies - functions that constitute the very core of the Office of the State Treasurer - the court found the act to be unconstitutional. *Id.* at 782 - 783.

Mattson applies with equal force to this present case. First, in *Mattson*, the Supreme Court noted that even though certain functions of the State Treasurer were preserved, the office “now stands as an empty shell.” Here, without appropriated funds after June 30, 2005, many executive branch officials will essentially have no ability to operate and will effectively be nullified. The absence of funding will “strip [the executive branch offices] of all [their] independent core functions” as certainly as the legislative enactment did in *Mattson*. See *Executive Branch Core Functions*, Concl. of Law 4, at 6-7 (holding that “[f]ailure to fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution”).

Second, the *Mattson* decision recognizes that the Minnesota Constitution provides that the Office of State Treasurer has certain inherent powers even if those powers are not expressly set forth in the constitution. As the court noted, Section 4 of Article V of the Minnesota Constitution simply states: “the duties and salaries of the executive officers *shall be prescribed by law.*” *Id.* at 780 (emphasis added). Even with this express declaration in the Constitution that the Treasurer’s duties were to be *prescribed by law*, meaning by legislative enactment, the Court held that there were implicit limits on the legislature’s powers. Thus, the separation of powers doctrine prevents one branch of government from exercising its authority (or failing to exercise

its ability) to override the inherent authority of the other branches of government. Similarly, here, the executive officers have functions inherent in their offices that cannot be eliminated by legislative action or inaction.⁴

The *Mattson* decision is consistent with decisions in other states. See, e.g., *Williams v. State Legislature of the State of Idaho*, 111 Idaho 156, 722 P.2d 465 (1986) (legislature cannot eliminate core functions of state auditor simply by not appropriating funds for that function); *Morris v. Glover*, 49 S.E. 786 (Ga. 1905) (legislature cannot expressly abolish office of county treasurer and cannot accomplish the same result by transferring its duties to another office).

It is clear that the absence of appropriated funds cannot terminate the provision of the core functions of the executive branch. Accordingly, the requested relief should be granted.

II. FAILURE TO FUND THE GOVERNMENT ENTITIES' CORE FUNCTIONS WILL DEPRIVE MINNESOTA CITIZENS OF RIGHTS GUARANTEED BY THE UNITED STATES AND MINNESOTA CONSTITUTIONS.

In *Executive Branch Core Functions* the court held that Minnesota citizens are guaranteed rights under the State and Federal Constitutions, and that those rights would be infringed "if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2001." *Executive Branch Core Functions*, Concl. of Law 6, at 7. The court recognized that core functions of the executive branch "include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property." *Id.*, Concl. of Law 10, at 8.⁵ The court further recognized that Minnesota schools

⁴ The Offices of the Governor and other elected constitutional officers were funded in the "State Government" appropriation bill passed by the legislature this year. Act of June 3, 2005, ch. 156. Many of the larger state Departments and agencies, however, have not been funded. See Exhibit 1 to the Affidavit of Mike Hatch.

⁵ Article I, Section 1 of the Minnesota Constitution provides in part that: "[g]overnment is instituted for the security, benefit and protection of the people...."

provide the constitutional guarantee of "a general and uniform system of public schools" "with the assistance of substantial State aid." *Id.*, Concl. of Law 7, at 7.⁶

It is well-settled that states cannot abridge or ignore the constitutional rights of their citizens simply because the legislature has not appropriated money to meet those constitutional obligations. In *Watson v. City of Memphis*, 373 U.S. 526, 83 S. Ct. 1314 (1963) the Supreme Court reviewed a lower court's decision ordering the City of Memphis to immediately desegregate its public parks and other recreational facilities. As one of its defenses, the city claimed that it should be given more time to desegregate because a number of the recreational facilities would have to be closed because of the inadequacy of the present park budget. The Supreme Court rejected this justification for delay by noting that "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them." *Id.* at 537, 83 S. Ct. at 1321. The lack of resources defense has been rejected in other contexts. See *Barker v. Wingo*, 407 U.S. 514, 531, 92 S. Ct. 2182, 2192 (1972) (delays in criminal justice process may violate defendants' due process rights, and overcrowded courts are not a defense); *Harris v. Champion*, 15 F.3d 1538, 1562-63 (10th Cir. 1994) (neither lack of funding for public defender system, or mismanagement of resources by public defender constitute acceptable excuses for lengthy delays in adjudicating direct criminal appeals); *Williams v. Bennett*, 689 F.2d 1370, 1387-88 (11th Cir. 1982) ("Defendants clearly may not escape liability [for an Eighth Amendment violation] solely because of the legislature's failure to appropriate requested funds. . . . If . . . a state chooses to operate a prison system, then each facility must be operated in a manner consistent with the

⁶ Article XIII, Section 1 of the Minnesota Constitution provides in part that "it is the duty of the legislature to establish a general and uniform system of public schools."

Constitution"); *Gates v. Collier*, 501 F.2d 1291, 1320 (5th Cir. 1974) ("shortage of funds is not a justification for continuing to deny citizens their constitutional rights.")

In protecting the constitutional rights of citizens where funding is an issue, courts have even gone so far as to order tax increases. See *Stell v. Board of Public Education for the City of Savannah and the County of Chatham*, 724 F. Supp. 1384, 1405 (S.D. Ga. 1988) (federal court has broad equitable powers to remedy evils of desegregation, including a narrowly defined power to order an increase in local tax levies on real estate, after exploration of every other fiscal alternative), citing *Liddell v. State of Missouri*, 731 F.2d 1294, 1320 (8th Cir.), cert. denied, 469 U.S. 816 (1984). See *Welsch v. Likins*, 550 F.2d 1122 (8th Cir. 1977); *Jackson v. Bishop*, 404 F.2d 571, 580 (8th Cir. 1968).

Here, performance of the core functions of the government entities assure that the constitutionally guaranteed rights of Minnesota citizens continue to be protected. The absence of funding does not eliminate the existence of these rights. It is therefore appropriate that the court provide the relief requested to assure that constitutional protections continue to be afforded to the citizens of this State.

III. THE STATE MUST CONTINUE TO PARTICIPATE IN FEDERAL PROGRAMS WHICH REQUIRE STATE FUNDING.

The State has entered into a variety of agreements with the federal government pursuant to which federal programs are carried out by the State and local governments. Such programs include those providing public and medical assistance to needy persons and those encompassing certain transportation and highway construction projects. In addition to federal funding, these programs require a certain level of state funding under the federal laws establishing such programs. See *Executive Branch Core Functions*, Findings of Fact 7-8, at 4-5.

The Supremacy Clause of the United States Constitution, Article VI, Cl. 2, makes the United States Constitution and federal laws the supreme law of the land governing anything to the contrary in state laws or state constitutions. *Testa v. Katt*, 330 U.S. 386, 67 S.Ct. 810 (1947). As a result, the Supremacy Clause requires that payments be made and programs continue under the applicable federal laws regardless of whether any state appropriation has been made in connection with such programs. In *Executive Branch Core Functions* the court held that “[t]he Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.” Concl. of Law 8, at 7. In numerous other cases involving budget impasses and public assistance payments, courts have ordered such payments to be continued despite the lack of any appropriation by the legislature. See *Coalition for Basic Human Needs v. King*, 654 F.2d 838, 841 (1st Cir. 1981); *Pratt v. Wilson*, 770 F. Supp. 539, 543-44 (E.D. Cal. 1991) (after State Department of Social Services sent letter to county welfare directors advising that state would not release AFDC funds, either state or federal, after July 1, 1990 absent enactment of a state budget, court ruled that cutting off such funds would violate federal law and could not be done); *Coalition for Economic Survival v. Deukmejian*, 171 Cal. App. 3d 954, 957 (Cal. App. 2 Dist. 1985) (interim stay ordering state to refrain from withholding AFDC payments during budget impasse).

Of particular note is the case of *Knoll v. White*, 595 A.2d 665 (Pa. Comwth. Ct. 1991). At issue in that case was a provision in the Pennsylvania Constitution pertaining to appropriations which is virtually identical to that contained in the Minnesota Constitution. When no appropriations were made by the Pennsylvania legislature due to a budget impasse, the Pennsylvania State Treasurer sought a declaratory order regarding the legality of continued payment of public assistance payments and benefits. The *Knoll* court held that under the

Supremacy Clause and federal law, Pennsylvania was required to continue making payments with respect to federally-based programs, including aid for dependent children, refugee cash assistance, food stamps, and medical assistance. The court held that the federal mandate, being supreme over the state constitutional requirement for appropriations authorization, required the continuation of such payments. *Id.* at 668.

In light of these holdings, the government entities that participate in certain federal programs related to their core functions must continue to make payments and operate such programs.

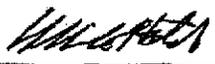
CONCLUSION

For the above reasons, it is appropriate for the Court to direct that the core functions of the executive branch of government continue to be performed and that payments be made for the performance of such functions.

Dated: June 15, 2005

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota



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ATTORNEY FOR PETITIONER

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

Court File No. C9-01-5725

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
MOTION FOR TEMPORARY FUNDING**

On June 21, 2001, this Court issued an Order to Show Cause setting a hearing date of June 29, 2001 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2001. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. At the hearing on June 29, 2001 appearances were made by Attorney General Mike Hatch and Chief Deputy Attorney General Alan I. Gilbert on behalf of Petitioner. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.
2. The Minnesota Legislature ended its regular session this year on May 21, 2001 without approving appropriations for nearly all of the executive branch officers and agencies for

Exhibit A

the fiscal year beginning on July 1, 2001. On June 11, 2001 Governor Jesse Ventura convened the legislature in special session. The special session has not resulted in any appropriations for the executive branch officers and agencies.

3. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the six executive branch Constitutional Officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

4. The following Public Officials appointed by the Governor serve in a variety of capacities in the executive branch of government on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government:

- 1) David Fisher, Department of Administration,
- 2) Gene Hugoson, Department of Agriculture,
- 3) Christine Jax, Department of Children, Families and Learning,
- 4) James Bernstein, Department of Commerce,
- 5) Cheryl Ramstad Hvass, Department of Corrections,
- 6) Earl Wilson, Department of Economic Security,
- 7) Julien Carter, Department of Employee Relations,
- 8) Pamela Wheelock, Department of Finance,
- 9) Jan Malcolm, Department of Health
- 10) Janeen Rosas, Department of Human Rights,

- 11) Michael O'Keefe, Department of Human Services,
- 12) John Swift, Iron Range Resources and Rehabilitation Board,
- 13) Gretchen Maglich, Department of Labor and Industry,
- 14) Major General Eugene Andreotti, Department of Military Affairs,
- 15) Allen Garber, Department of Natural Resources,
- 16) Charles Weaver, Department of Public Safety,
- 17) Matthew Smith, Department of Revenue,
- 18) Rebecca Yannish, Department of Trade and Economic Development,
- 19) Elwyn Tinklenberg, Department of Transportation,
- 20) Jeffrey Olson, Department of Veterans Affairs,
- 21) Karen Studders, Minnesota Pollution Control Agency,
- 22) Dean Barkley, Department of Planning,
- 23) Morris Anderson, Chancellor, Minnesota State Colleges and Universities,
- 24) Howard Bicker, Executive Director, State Board of Investment,
- 25) Katherine G. Hadley, Housing Finance Agency,
- 26) Ted Mondale, Chair, Metropolitan Council,
- 27) Richard Scherman, State Board of Public Defense, and
- 28) David S. Paull, Board on Judicial Standards.

5. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of occupational and licensing boards, regulatory boards, mediation bureaus, minority affairs counsels, and other commissions which act on behalf of state government and perform core functions.

6. Local governmental units such as counties, municipalities and school districts are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the state to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid. School districts will be unable to carry out this core function without the State continuing to make timely payments to the school districts.

7. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2001, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

8. Examples of the federal programs referenced in paragraph 7 include the following welfare programs: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for

which they were eligible. *See* 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S.C. § 1396a(a)(10) and (9). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c.

9. Due to the lack of legislative appropriations, the six Constitutional Officers of the State of Minnesota, the executive branch agencies, and the local units of Minnesota government, have insufficient funds to carry out all of their core functions as of July 1, 2001. Any failure to properly fund core functions of the executive branch would have severe consequences for the citizens of Minnesota.

10. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

11. Pursuant to the criteria referenced in paragraph 10 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;

- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

12. The State of Minnesota is not facing a budget crisis. The State has ample reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.
2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2000) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2000).
3. - Article XI, Section 1 of the Minnesota Constitution provides that "no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate.
4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to

fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that "government is instituted for the security, benefit and protection of the people" Article I, Section 1. Minnesota citizens are guaranteed under both the United States and Minnesota Constitutions the right to due process before deprivation of life, liberty or property. U.S. Const. Amendments III and IV; Minn. Const., Article I, Section 7. Minnesota citizens are guaranteed a wide range of rights under the Bill of Rights in both constitutions. U.S. Const. Amendments I-X; Minnesota Const. Article I. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2001.

7. The Minnesota Constitution requires that the State provide an adequate education through a "general and uniform system of public schools." Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, Aid to Families with Dependent Children and other similar welfare or social service programs, and the Section 8 housing program. Under these agreements continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. By way of example, core functions include, but are not limited to, the provision of healthcare to patients in state-run facilities and programs and the funding of patient care and services in local government or private facilities or programs, such as hospitals, nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services; the State's education system; the application and maintenance of federal and/or State contracted or mandated programs and projects, such as welfare, medical assistance, emergency and housing programs and construction projects; the preservation of safety in state-run facilities; enforcement of laws involving food, drugs, hazardous materials, safety in modes of transportation and state highways (such as the inspection of products and services provided pursuant to construction contracts), the proper provision of healthcare and the integrity of our judicial system; law enforcement, criminal investigations, and prosecutorial and public defender activities; emergency and disaster assistance; activities that ensure the continued production of power, maintenance of the power distribution system, and telecommunications systems; protecting the state and federal constitutional rights of Minnesota citizens; care of prisoners and others in the custody of the government; protection and maintenance of lands, buildings, waterways, transport property, equipment and other property owned or leased by the state government; activities essential to the preservation of the elements of the financial system of the State, including revenue collection, borrowing, payment of debts, compliance with bond and similar

requirements, maintenance of pensions, retirement programs and investment of state and retirement assets and prompt payment of amounts owed to employees, vendors, and contractors.

ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. The Minnesota Commissioner of Finance, Pamela Wheelock, and the Minnesota Treasurer, Carol Johnson, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.

3. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Commissioner of Finance and the State Treasurer, who shall pay for such services.

4. Esther Tomljenovich is hereby appointed as a Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

5. This Order shall be effective until the earliest of the following:

- a. July 23, 2001;
- b. The enactment of a budget by the State of Minnesota to fund the core functions of government after June 30, 2001; or

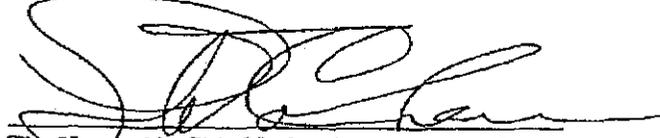
c. Further Order of this Court.

6. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

- a. The Honorable Jesse Ventura, Governor of the State of Minnesota,
- b. The Honorable Don Samuelson, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Pamela Wheelock, Commissioner of Finance,
- e. The Honorable Carol Johnson, Minnesota State Treasurer, and
- f. The Honorable Robert Small, Acting U.S. Attorney for the District of Minnesota.

7. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

BY THE COURT:



The Honorable Chief Judge Lawrence D. Cohen

Dated this 29th day of June, 2001.

AG: 488383.v.01

3. I am generally familiar with the core functions of the executive branch Constitutional Officers and executive branch agencies. Core functions are those functions that constitute the inherent constitutional duties of those Offices and also those functions that ensure compliance with state and federal constitutional rights of citizens and with federal mandates placed on the State.

4. The executive branch includes the following Public Officials appointed by the Governor, who serve in a variety of capacities on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government. The agencies headed by these Officials have not been funded by the legislature.

- 1) Gene Hugoson, Department of Agriculture,
- 2) Alicé Seagren, Department of Education,
- 3) Glenn Wilson, Department of Commerce,
- 4) Matt Kramer, Department of Employment and Economic Development,
- 5) Dianne Mandernach, Department of Health,
- 6) Kevin Goodno, Department of Human Services,
- 7) Sandy Layman, Iron Range Resources and Rehabilitation Board,
- 8) Scott Brener, Department of Labor and Industry,
- 9) Gene Merriam, Department of Natural Resources,
- 10) Sheryl Corrigan, Minnesota Pollution Control Agency,
- 11) Tim Marx, Housing Finance Agency,
- 12) Michael Campion, Public Safety (partially funded),
- 13) Carol Molnau, Transportation.

5. In addition to the Public Officials referenced in the preceding paragraph, the executive branch includes a variety of boards, commissions and the like which act on behalf of the State and which perform core functions.

6. I am aware that local governmental units such as county governments, school districts, and municipal governments are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the State to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of very substantial state aid. *See, e.g.*, the funding formulas in Minn. Stat. ch. 126C (2004). School districts will be unable to carry out this core function if the State is unable to make timely state aid payments to them.

7. I am aware that the State of Minnesota has entered into numerous agreements with the federal government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. If the executive branch is without appropriations as of July 1, 2005, the State will be unable to carry out these core functions which are mandated by the federal government pursuant to the Supremacy Clause of the United States Constitution. Examples of these federal programs include, but are not limited to, the following health and welfare programs: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was

required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for which they were eligible. *See* 7 U.S.C. § 2020(a), § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S. § 1396a(a)(9) and (10). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025; 42 U.S.C. § 609(a)(7); 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under federal programs such as the TANF, Medicaid or food stamp program, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in such programs. *See* 7 U.S.C. § 2020(g); 42 U.S.C. § 609; 42 U.S.C. § 1396c. The Department of Human Services is responsible under state law for administering the state programs relating to each of these three federal programs. *See* Minn. Stat. §§ 245.771 (Food Stamp Program); 256J.02 (TANF Program); and 256.01, subd. 2 (Medicaid Program) (2004).

8. Due to the lack of legislative appropriations in the 2005 legislative session, many executive branch agencies and local units of Minnesota government have insufficient funds to carry out their core functions as of July 1, 2005. In my opinion, any failure to properly fund core functions of the executive branch will have severe and irreparable harm for the citizens of Minnesota.

9. In 2001 I petitioned this Court to act to preserve the operation of core functions of the executive branch of government after the Minnesota Legislature had failed to pass a budget funding state government. At that time this Court issued an Order directing that state and local agencies continue to perform the core functions required by the Minnesota and United States

Constitutions and by federal law, and that the State continue to pay for such functions performed after July 1, 2001. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001) (attached to Petitioner's Memorandum in Support of Motion for Relief in this matter). In that Order the Court directed state and local agencies to determine what core functions were required to be performed by each. State executive branch agencies made such determinations, and the list of "critical" operations, listed by agency, which were to remain open in the event of a state government shutdown as of July 1, 2001, is contained in Exhibit 2 to this Affidavit.

10. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- 1) Those services providing for national security;
- 2) Those services providing for benefit payments in the performance of contract obligations, and
- 3) Conducting essential activities to the extent that they protect life and property.

11. Pursuant to the above criteria, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- 1) Medical care of inpatients and emergency outpatient care;
- 2) Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- 3) Continuance of transportation safety functions and the protection of transport property;
- 4) Protection of lands, buildings, waterways, equipment and other property owned by the government;
- 5) Care of prisoners and other persons in the custody of the government;
- 6) Law enforcement and criminal investigations;
- 7) Emergency and disaster assistance;
- 8) Activities that ensure the production of power and the maintenance of the power distribution system;

- 9) Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- 10) Activities necessary to maintain protection of research property.

12. Based upon my knowledge of the state's financial situation, I am aware that the State of Minnesota is not facing a budget crisis. The State has ample reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

FURTHER AFFIANT SAYETH NOT.

Dated:

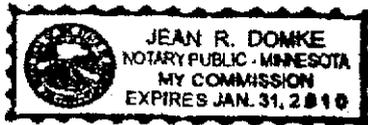
June 15, 2005

Mike Hatch
MIKE HATCH

Subscribed and sworn to before me
this 15 day of June, 2005.

Jean R. Donke
NOTARY PUBLIC

AG: #1431507-v1



6/8/05 8:53 AM

AGENCY	Agency Number
E-12 Education	
Education, Dept. of (K-12)	E37
Minn State Academies	E44
Perpich Center for Arts Education	E25
Higher Education (This bill has been signed.)	
Higher Education Services Office	E60
University of Minnesota	E81
Minn State Colleges & Universities	E26
Mayo Foundation	G8H
Higher Education Facilities Authority	E9W
Health and Human Services	
Human Services, Dept. of	H55
Health, Dept. of	H12
Veteran's Home Board	H76
Disability Council	G9Y
Ombudsman for MH, MR	H9G
Ombudsperson for Families	G92
Chiropractic, Board of	H7H
Dentistry, Board of	H7F
Medical Practices, Board of	H7B
Nursing, Board of	H7C
Nursing Home Admin. Board of	H7K
Optometry, Board of	H7J
Pharmacy, Board of	H7D
Podiatry, Board of	H7Q
Psychology, Board of	H7V
Veterinary Medicine, Board of	H7R
Dietetic & Nutrition Practice Bd	H7U
Social Work, Board of	H7L
Marriage & Family Therapy, Board of	H7M
Emergency Medical Svcs Reg Bd	H7S
Physical Therapy, Board of	H7W
Behavioral Health & Therapy Bd	H7X

6/6/05 8:53 AM

AGENCY	Agency Number
Environment, Agriculture & Econ Dev	
Pollution Control Agency	R32
Environmental Assistance Office	R18
Zoological Board	E77
Metropolitan Council Parks	T9B
Natural Resources, Dept of	R29
Water & Soil Resources Board	R9P
Minnesota Conservation Corp	R28
Agriculture, Dept of	B04
Animal Health, Board of	B14
Science Museum of MN	E97
Leg Comm MN Res (LCMR)	L5N
Agriculture Utilization Research Inst (AURI)	B9V
Employment & Economic Dev, Dept of	B22
Explore Minnesota Tourism	B20
Minn Technology, Inc.	B9U
Housing Finance Agency	B34
Commerce, Dept of	B13
Accountancy, Board of	B7P
Arch/Eng, Board of	B7E
Barber/Cosmetologist Examiners	B11
Electricity, Board of	B7A
Labor & Industry, Dept of	B42
Mediation Service Bureau	G45
Public Utilities Commission	B82
Minn Historical Society	E40
Workers Comp Court/Appeals	B41
Iron Range Resources & Rehab Board	B43
Arts Board	E50
Transportation	
Transportation, Dept. of	T79
Metropolitan Transit Council	T9B
Public Safety, Dept of (Highway)	P07
Transp. Contingent Accounts	G9R
Transp. Tort Claims	G9R

6/8/05 8:53 AM

AGENCY	Agency Number
Public Safety (This bill has been signed.)	
Private Detective Board	B7S
Public Safety, Dept of (Crime) - BBS Only	P07
Peace Officers Stds & Trng Bd.	P7T
Supreme Court	J65
Court of Appeals	J58
Legal Profession Boards	J65
Trial Courts	J33
Judicial Standards Board	J70
Public Defense Bd	J52
Tax Court	J68
Human Rights, Dept. of	G17
Corrections, Dept of	P78
Sentencing Guidelines Commission	P9E
Uniform Laws Commission	G96

6/8/05 8:53 AM

AGENCY	Agency Number
State Government (This bill has been signed.)	
Black Minnesotans Council	G8L
Chicano Latino Affairs Council	G9M
Asian-Pacific Minnesotans Council	G9N
Indian Affairs Council	G19
Legislature	L10
Secretary of State	G53
Campaign Finance & Public Disc. Board	G9J
Governor's Office	G39
State Auditor	G51
Attorney General	G06
Investment Board	G38
Administrative Hearings Office	G9K
Administration, Dept of	G02
Capitol Area Architectural Planning Board	G9X
Finance, Dept of	G10
Finance Non-Operating	G9R
Employee Relations, Dept of	G24
Payroll Clearing	GPR
Treasury Non-Operating	G9T
Admin-Capital Project & Relocation	G16
Revenue, Dept of	G67
Amateur Sports Commission	B9D
Military Affairs, Dept of	P01
Veteran's Affairs, Dept of	H75
VFW	G98
Military Order of the Purple Heart	G93
Disabled American Vets	G99
Lawful Gambling Control Board	G09
Racing Commission	G05
Lottery	G03
Contingent Accounts	G9R
Tort Claims	G9R
Minn State Retirement System	G62
Public Employees Retirement Assn	G63
Teachers Retirement Association	G69
Mpls Pensions/Retirement	G8S
Debt Service - Direct Approp	G9Q
Minneapolis Teachers' State Aid	G8S
1st Class City Teachers' State Aid	G8S

AGENCY	CRITICAL and/or CORE OPERATIONS or OPERATIONS NOT DIRECTED BY PROPOSED CRITICAL and/or CORE OPERATIONS
ACCOUNTANCY BOARD	Closed

Total Employees: 5

ADMINISTRATION DEPT

Total Employees: 902

Portions of plan submitted for support of critical operations approved. Included:

- InterTech
 - Network operation
 - Computing Services
 - Voice
 - Computer/Network Security
- Contingency Planning
- Mn Multistate Contracting for Pharmacy
- Building operations.
- Security for parked cars.
- Limited Central Mail Services in order to further mission of "critical operations" or to secure mail of agencies or operations that have been closed.
- Contract Purchasing, critical needs only
- Risk Management emergency response
- State Building Codes emergency response

Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.

Closed

ADMINISTRATIVE HEARINGS

Total Employees: 93

AGRICULTURE DEPT

Total Employees: 521

The following portions of your critical operations plan have been approved:

- Commercial Feed Regulation
- Agricultural Chemical Emergency Response
- Food Inspection
- Dairy Inspection
- Food Safety Emergency & Food Reinspection
- State Meat Inspection
- Laboratory Services
 - Agronomy Analysis/Ag Chemical Emergency Response
 - Food Safety Emergencies/Dairy and Food Inspection Services
 - Monitoring and Regulatory Analysis to State Meat Inspection Program.
 - Regulatory Analysis for Commercial Feed
- Nuclear Response
- Biological Control Program

Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.

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Exhibit 2

AGENCY	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS
2001 Shutdown	What May Remain <input checked="" type="checkbox"/> OPEN

AMATEUR SPORTS COMM

Closed

Total Employees: 8

ANIMAL HEALTH BOARD

The following portions of your critical operations plan have been approved:

Total Employees: 31

- Investigate suspect rabies cases; and,
- Investigate suspect foreign animal disease cases.

Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.

ARCHITECTURE, ENGINEERING BD

Closed

Total Employees: 9

ARTS BOARD

Closed

Total Employees: 21

ASIAN-PACIFIC COUNCIL

Closed

Total Employees: 4

BARBERS BOARD

Closed

Total Employees: 2

BLACK MINNESOTANS COUNCIL

Closed

Total Employees: 4

CAMPAIGN FINANCE BOARD

Closed

Total Employees: 8

CAPITOL AREA ARCHITECT

Closed

Total Employees: 4

CENTER FOR ARTS EDUCATION

Closed

Total Employees: 95

74

AGENCY 2001 Shutdown	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS Agency Status: Open
CHICANO LATINO AFFAIRS COUNCIL Total Employees: 5	Closed
CHILDREN, FAMILIES, & LEARNING Total Employees: 661	Portions of plan submitted for critical operations approved: <ul style="list-style-type: none"> • Maltreatment of Minors Program Only staff and operating expenses that are minimally necessary to continue, secure, or support this operation is authorized in the event of a government shut down.
CHIROPRACTIC EXAMINERS BOARD Total Employees: 5	Closed
COMMERCE DEPT Total Employees: 328	Plan submitted for critical operations approved. Included: <ul style="list-style-type: none"> • Payment for the Minnesota Message Relay Service.
CORRECTIONS DEPT Total Employees: 3810	Plan submitted for critical operations approved. Included: <ul style="list-style-type: none"> • Corrections Institutions <ul style="list-style-type: none"> • Inmate custody • Health Services • Transfer and Transportation • Special Investigations • Facility Support • Physical Plant • Offender Community Supervision • Support Services Directly Related to Institutional Care and Offender Community Supervision Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
CRIME VICTIM OMBUDSMAN Total Employees: 5	Closed
DENTISTRY BOARD Total Employees: 10	Closed
DIETETICS & NUTRITION PRACTICE Total Employees: 2	Closed

AGENCY 2001 Shutdown	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open
DISABILITY COUNCIL Total Employees: 10	Closed
ECONOMIC SECURITY DEPT Total Employees: 1780	<p>Plan submitted for critical operations approved. Included:</p> <ul style="list-style-type: none"> • Unemployment Insurance Benefit Payments and Initial Claims <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
ELECTRICITY BOARD Total Employees: 27	NA
EMERGENCY MEDICAL SERVICES BD Total Employees: 15	<p>Plan submitted for support of critical operations approved on an as-needed basis. Included:</p> <ul style="list-style-type: none"> • Ensuring ambulance coverage in the area of disaster declared by Governor's emergency management response team (On-call only) <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
EMPLOYEE RELATIONS DEPT Total Employees: 226	<p>Plan submitted for support of critical operations approved. Included:</p> <ul style="list-style-type: none"> • Limited Information Systems Support for critical systems. • Limited support from SEMA4 unit only for July 13 payroll. • SEGI program • Workers Compensation <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
ENVIRONMENTAL ASSISTANCE Total Employees: 66	Closed
FARIBAULT ACADEMIES Total Employees: 293	<p>Plan submitted for support of critical operations approved. Included:</p> <ul style="list-style-type: none"> • Security personnel necessary to provide 24/7 coverage of two sites (16 state buildings) and 60+ acres of government land at an estimated value of \$80-\$100 million. <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>

AGENCY 2001 Shutdown	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open
FINANCE DEPT Total Employees: 174	Plan submitted for support of critical operations approved. Included: Direct Support of Critical Operations <ul style="list-style-type: none"> • Periodically Opening MAPs for purchasing/payments • Periodically opening Payroll for paying critical employees or making last FY 01 payroll. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
GAMBLING CONTROL BOARD Total Employees: 34	Closed
GOVERNORS OFFICE Total Employees: 51	As the Chief Executive Officer of government, the Office of Governor will continue with minimal staff during the shutdown to include: <ul style="list-style-type: none"> • Governor • Lt. Governor • Senior Team • Communications • Policy Management • Operations
GOVT INNOV & COOPERATION BOARD Total Employees: 1	Closed
HEALTH DEPT Total Employees: 1311	Plan submitted for support of critical operations approved. Included: <ul style="list-style-type: none"> • Investigate and respond to Disease Outbreaks • Core Public Health Laboratory Capacity • Health Facilities Complaint Investigation • Safeguard Public Health Data • Emergency Response to Nuclear Accidents and other toxic releases • Public Health Management & Communications • Facility Security • Minnesota Children With Special Health Needs • WIC Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
HIGHER ED FACILITIES AUTHORITY Total Employees: 3	NA
HIGHER ED SERVICES OFFICE Total Employees: 76	Closed

AGENCY 2001 Shutdown	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open
HOUSING FINANCE AGENCY Total Employees: 184	NA
HUMAN RIGHTS DEPT Total Employees: 64	Closed
HUMAN SERVICES DEPT Total Employees: 6739	<p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • State Operated Services-in-patient treatment for mentally ill, chemically dependent, psychopathic personalities, & nursing home services. Includes support & oversight for client treatment services. Minnesota Extended Treatment Options (METO), day training and habilitation services (DT&H). • Residential services for persons with developmental disabilities. • Mental Health Initiative medication administration & crisis response teams • Developmentally disabled community support services-In home support staff & crises • Cash & Food Assistance to Families & Individuals • Adoption Assistance Payments/Custody Assistance • Health care-Medical Assistance, General Assistance Medical Care, & Minnesota Care • Payments to personal care attendants, private duty nursing services, home health agencies, waiver service providers, pharmacy services, & nursing homes. • Payments to special transportation providers paid through the medical assistance program. <i>(continued on next page)</i>
HUMAN SERVICES DEPT (continued) Total Employees: 6739	<ul style="list-style-type: none"> • Staff to process premium payments for MnCare enrollees • Senior Nutrition & home delivered meals • Guardianship Services • Social Service Information System (SSIS) Help-Line & Network Support to County Servers • Daily cash and food assistance to families and individuals, and emergency assistance. Benefit types included: Minnesota Family Investment Program (MFIP), Minnesota Supplemental Aid (MSA), Refugee Cash Assistance (RCA), Food Stamps (FS), General Assistance (GA), Group Residential Housing (GRH), State-funded Food benefits, MFIP cash and food to non-citizens, TANF Emergency Assistance, Expedited Food Stamps, and emergency assistance provided under the GA and MSA programs. <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
INDIAN AFFAIRS COUNCIL Total Employees: 8	Closed
INVESTMENT BOARD Total Employees: 25	Closed
IRON RANGE RESOURCES & REHAB Total Employees: 177	NA

AGENCY 100% Shutdown	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That may remain Open
LABOR AND INDUSTRY DEPT Total Employees: 404	The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Limited Workplace Safety/Health Regulation-Response to fatalities, imminent danger and catastrophic workplace events. • Boiler Vessel & High Pressure Piping- Limited to Boiler/Piping system failures causing fatal or imminent danger. • Child Labor Regulation • Benefit Payments to Injured Workers • DLI Central and Technology Services Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
LOTTERY Total Employees: 206	NA
MARRIAGE & FAMILY THERAPY BD Total Employees: 2	Closed
MEDIATION SERVICES DEPT Total Employees: 23	Closed
MEDICAL PRACTICE BOARD Total Employees: 24	The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Processing and investigating complaints against physicians and other health care providers alleging unsafe or illegal health care practices. • Issuing new licenses and permits to physicians and other regulated health care providers. • Renewal of licenses and registrations to physicians and other health care providers in order that they may continue to practice medicine legally. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
METROPOLITAN COUNCIL	The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Metro-Mobility Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.

AGENCY 2001 Shutdown	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS that may remain OPEN
<p>MILITARY AFFAIRS DEPT</p> <p>Total Employees: 308</p>	<p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Property Protection • Emergency and Disaster Assistance • Waste Water Treatment • Air National Guard Training • Camp Ripley Training <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
<p>MN STATE COLLEGES/UNIVERSITIES</p> <p>Total Employees: 19306</p>	<p>NA</p>
<p>NATURAL RESOURCES DEPT</p> <p>Total Employees: 2629</p>	<p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Securing /Protecting DNR properties • Law enforcement/criminal investigations • Emergency/Disaster Assistance • Protection of Research Property Metro Goose Control Project <p>Note: Others (up to 75) may be added in event of emergencies such as fire, flood, tornado, etc.</p> <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
<p>NURSING BOARD</p> <p>Total Employees: 36</p>	<p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Processing complaints alleging unsafe nursing practices. • Issuing of licenses/temporary permits to practice nursing • Renewal of licensure • Health Professional Services Program <ul style="list-style-type: none"> • Accept self and third party referrals to the program • Respond to issues of non-compliance <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
<p>NURSING HOME ADMIN BOARD</p> <p>Total Employees: 2</p>	<p>Closed</p>
<p>OMBUDSMAN FOR CORRECTIONS</p> <p>Total Employees: 5</p>	<p>Closed</p>

AGENCY	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS
That May Shut Down	That May Remain Open
OMBUDSMAN MH/MR	The following portions of your critical operations plan have been approved:
Total Employees: 20	<ul style="list-style-type: none"> • Individual Client Services/Investigations or Reviews • Death and Serious Injury Review
OMBUDSPERSON FOR FAMILIES	Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
	Closed
Total Employees: 4	
OPTOMETRY BOARD	
Total Employees: 2	Closed
PEACE OFFICERS BOARD (POST)	
Total Employees: 13	Closed
PHARMACY BOARD	The following portions of your critical operations plan have been approved:
Total Employees: 15	<ul style="list-style-type: none"> • Inspectors/investigators for enforcement of sanitation and record keeping requirements relating to the safety of drug distribution and dispensing in Minnesota.
PHYSICAL THERAPY BOARD	Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
	Closed
Total Employees: 1	
PLANNING, STRATEGIC & L R	
Total Employees: 88	Closed
PODIATRIC MEDICINE BOARD	
Total Employees: 1	Closed

AGENCY 2001 Shutdown	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open
POLLUTION CONTROL AGENCY Total Employees: 753	The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Emergency Response Remediation • Continue Air Quality Monitoring System for Twin Cities Metropolitan area and the Mille Lacs Lake area. • Call back of Communications Director and Facilities Manager in the case of large catastrophic environmental or facility emergencies. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
PRIVATE DETECTIVES BOARD Total Employees: 2	Closed
PSYCHOLOGY BOARD Total Employees: 8	Closed
PUBLIC SAFETY DEPT Total Employees: 1978	The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Patrol <ul style="list-style-type: none"> • Road troopers and selected supervisors • Radio Communications Officers and supervisors • Capitol security- limited to protect state property including executive protection • Emergency Management <ul style="list-style-type: none"> • Duty officers • Hazardous materials response • Fire Marshal/Pipeline Safety <ul style="list-style-type: none"> • Arson Investigation • Hazardous response • Skeleton engineers in pipeline • BCA <ul style="list-style-type: none"> • CJIS (no trainers) • Lab • Investigations including communications • Office of Technology <ul style="list-style-type: none"> • Voice and data communications • Security • Network operations Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
PUBLIC UTILITIES COMM Total Employees: 45	Closed
RACING COMMISSION Total Employees: 6	Closed

AGENCY	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS
2001 Shutdown	That May Remain Open
REVENUE DEPT Total Employees: 1196	The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Minimal Activities Associated With Making Deposits: <ul style="list-style-type: none"> • Mail Receiving, Sorting, Depositing of Cash • Electronic Receiving and Depositing of Cash • Deposit Control • Liens and License Release, Collections • Computer Systems Support • Ensure Safety and Security of Staff and Facilities • Reception, Front Door Coordination • Payroll, Receiving, Dockmaster • Minimal Activities Associated with posting to taxpayer accounts. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.
SENTENCING GUIDELINES COMM Total Employees: 7	Closed
SOCIAL WORK BOARD Total Employees: 12	Closed
TAX COURT Total Employees: 6	Closed
TRADE & ECON DEVELOPMENT DEPT Total Employees: 259	Closed
TRANSPORTATION DEPT Total Employees: 5350	The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Provide highway operations and maintenance emergency services affecting the safety of the public: <ul style="list-style-type: none"> • Barricade replacement-repair damaged guardrails or replace any removed construction site barriers • Repair hazardous conditions that occur on the roadways • Hazardous material incident response. • Assessment of traffic damage to bridges • Traffic signal repair • Provide computer and communications affecting the State Patrol in shared facilities • Provide Gopher One responses. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.

AGENCY 2001 Shutdown	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open
<p>VETERANS AFFAIRS DEPT Total Employees: 37</p>	<p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Financial Guardian Program. • Financial Subsistence Payment Program. <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
<p>VETERANS HOME BOARD Total Employees: 1180</p>	<p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Direct Care and Supporting Operations <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
<p>VETERINARY MEDICINE BOARD Total Employees: 2</p>	<p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Oversight of licensed veterinarians regarding compliance with state/federal laws regulating prescribing/dispensing of prescription drugs for use in food animals and the prescribing/dispensing of controlled substances to all animals. • Responding to allegations of licensees practicing veterinary medicine while impaired. <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>
<p>WATER & SOIL RESOURCES BOARD Total Employees: 72</p>	<p>Closed</p>
<p>WORKERS COMP COURT OF APPEALS Total Employees: 15</p>	<p>Closed</p>
<p>ZOOLOGICAL BOARD/Minnesota Zoo Total Employees: 266</p>	<p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Care of live animal collection <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>

4

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

FILED
Court Administrator

SECOND JUDICIAL DISTRICT

In Re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota

JUN 15 2005

Case Type: Civil

Court File No. CO 05-5928

[Signature]
Deputy

**MOTION FOR ORDER TO SHOW
CAUSE**

Petitioner Mike Hatch, Attorney General of the State of Minnesota, hereby moves the Court for an Order to Show Cause to be served by mail upon the parties set forth in Exhibit A to the Proposed Order, giving each party notice of the Petitioner's request that core functions of the State of Minnesota continue to operate and be funded from July 1, 2005 until the earlier of the following:

- 1) July 23, 2005,
- 2) The enactment of appropriations by the State of Minnesota to fund government services after June 30, 2005, or
- 3) Further order of this Court.

The Petitioner requests that the Order to Show Cause state that the hearing on the Petition be held at 1:30 p.m., June 29, 2005 before the Honorable Gregg E. Johnson in Courtroom 1240 at the Ramsey County Courthouse, St. Paul, Minnesota.

Dated: June 15, 2005

Respectfully submitted,

[Signature]

MIKE HATCH
Attorney General
Atty. Reg. No. 42158
102 State Capitol
St. Paul, Minnesota 55155-1002
(651) 297-4272 (Voice)
(651) 297-7206 (TTY)

ATTORNEYS FOR PETITIONER

FILED

STATE OF MINNESOTA COUNTY OF RAMSEY In the Matter of Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota	Court Administrator JUN 15 2005  Deputy	DISTRICT COURT SECOND JUDICIAL DISTRICT Case Type: Civil Court File No. <u>CO 05 528</u> (Chief Judge Gregg E. Johnson) PETITION OF GOVERNOR TIM PAWLENTY
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The Honorable Tim Pawlenty, Governor of the State of Minnesota, by and through his attorneys, respectfully submits the following Petition for Relief in the above-referenced matter.

PARTIES

1. Petitioner, Mike Hatch, is the duly elected Attorney General of the State of Minnesota. Attorney General Hatch has filed as both the Petitioner, and as Counsel of Record for Petitioner, in the above-referenced matter.

2. Petitioner, Tim Pawlenty, is the duly elected Governor of the State of Minnesota. Both the Minnesota Constitution and accompanying statutes state clearly that Governor Pawlenty has the duty to "take care that the laws be faithfully executed,"

prepare a unified state budget, safeguard state property and manage the operations of Executive Branch agencies. See, Minn. Const. Art. V., Sec. 3; *Minnesota Statutes* §§ 4.01; 4.035; 4.07; 4.075 (2004). Moreover, by statute, the Governor has a significant role in the authorization of the use of federal funds by agencies of the Executive Branch. See, *Minnesota Statutes* § 3.3005 (2004).

JURISDICTION AND VENUE

3. Proper jurisdiction lies with this Court pursuant to Article VI, Section 1 of the Minnesota Constitution and *Minnesota Statutes* § 484.01 (1) (2004).

4. If "established and reasonable procedures have failed" to result in sufficient appropriations for constitutionally-mandated functions, this Court, under the rule announced in *Clerk of Courts Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781 (Minn. 1976), may provide relief to aggrieved officials.

5. Venue is appropriate in the Second Judicial District of Minnesota pursuant to *Minnesota Statutes* §§ 542.01 and 542.09 (2004).

FACTUAL BACKGROUND

6. Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to make such appropriations as are necessary for agencies of state government to perform delegated functions.

7. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.”

8. The Minnesota Legislature ended its regular session this year on May 23, 2005, without approving appropriation bills for certain “core functions” of state government and other “critical services” of state government.

9. A “core function,” of State Government is one where the duty to perform services is required by:

- a. the Minnesota Constitution;¹
- b. the United States Constitution;²
- c. federal statute or regulation;³ or,
- d. contractual agreements with agencies of the United States.⁴

10. A “critical service,” of State Government is one where the performance of services is necessary to:

¹ See, Memorandum Opinion and Order, *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Case No. C9-01-5725, slip op. at 6-7 (Ramsey Cty. Dist. Ct. 2001).

² See, U.S. Const., Art. VI, Clause 2 (“This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be Supreme Law of the land; and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any state to the contrary notwithstanding”); *In Re Temporary Funding*, at 6-7.

³ *Id.*

⁴ *Id.*

- a. protect the lives, health and safety of those residing in Minnesota;⁵ or,
- b. safeguard public property against loss or casualty during any period in which government services may be interrupted.⁶

11. Accompanying this Petition (as Attachment 1 to the Affidavit of Eric L. Lipman) is a true and correct copy of the listing of Core Functions and Critical Services of State Government for which no appropriation has been adopted as of June 15, 2005.

12. On May 23, 2005, Governor Pawlenty caused to be filed with the Secretary of State a Proclamation calling members of the Minnesota Legislature into Special Session one minute after the last house adjourned from its 2005 Regular Session. Compare, Minn. Const. Art. VI., Sec. 12 with Attachment 2 of the Lipman Affidavit, *Proclamation for Special Session 2005* (May 23, 2005).

13. Notwithstanding more than 3 weeks of Special Session, the Minnesota Legislature has failed to approve appropriation bills for certain "core functions" of state government and other "critical services" of state government. As a result of this failure to appropriate monies, Governor Pawlenty's ability to fulfill his managerial duties under the Minnesota Constitution is compromised.

14. The following officials direct government agencies that perform core functions of state government, critical services of state government, or both; and for

⁵ See, *In Re Temporary Funding*, at 8.

⁶ See, *id.*

which there have been no appropriations made for the Fiscal Year beginning on July 1, 2005:

- a. Gene Hugoson, Department of Agriculture,
- b. Alice Seagren, Department of Education,
- c. Glenn Wilson, Jr., Department of Commerce,
- d. Matt Kramer, Department of Employment and Economic Development,
- e. Dianne Mandernach, Department of Health,
- f. Kevin Goodno, Department of Human Services,
- g. Scott Brener, Department of Labor and Industry,
- h. Gene Merriam, Department of Natural Resources,
- i. Michael Campion, Department of Public Safety,
- j. Carol Molnau, Department of Transportation,
- k. Sandy Layman, Iron Range Resources,
- l. Sheryl Corrigan, Minnesota Pollution Control Agency,
- m. Timothy E. Marx, Minnesota Housing Finance Agency, and,
- n. Peter Bell, Metropolitan Council.

Compare, generally, Minnesota Statutes § 15.06 (2004).

15. In addition to the Executive Branch officials referenced in the paragraph above, there are a variety of occupational licensing boards that act on behalf of State

Government and perform functions that are critical to protecting the lives, health and safety of those residing in Minnesota.

16. Local governmental units such as counties, municipalities and school districts are also charged under both state and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts, which assist the state fulfilling the constitutional obligation to provide a "general and uniform system of public schools." See, Minn. Const. Art. XIII, Section 1. Without the timely payment of certain state aids, state government would not be able to meet its obligations under Article XII of the Minnesota Constitution.

17. The State of Minnesota has entered into numerous agreements with departments of the United States government which require the State to make certain payments to individuals or local governmental units, or to perform certain duties in support of federal objectives. Examples of such obligations include payments of Aid to Families with Dependent Children, medical assistance and general assistance. Without the required appropriations from the Minnesota Legislature, as of July 1, 2005, the State will be unable to fulfill these core functions of government.

18. The penalty for default on the State's contractual obligations with the federal government can be severe. For example, if the State of Minnesota should fail to

meet its obligations under the Food Stamp Program, the Temporary Assistance to Needy Families (TANF) Program, or the Medicaid Program, it is subject to "severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs." *Compare*, 7 U.S.C. § 2020(g); 42 U.S.C. § 609; and 42 U.S.C. § 1396c with Memorandum Opinion and Order, *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Case No. C9-01-5725, slip op. at 4-5 (Ramsey Cty. Dist. Ct. 2001).

REQUEST FOR RELIEF

Wherefore, Petitioner Tim Pawlenty, respectfully requests the following relief:

19. A declaration that, notwithstanding the lack of a legislative appropriation, the Governor and other Executive Branch employees are authorized to undertake such "core functions," as ordered by this Court, that are required by:
 - a. the Minnesota Constitution;
 - b. the United States Constitution;
 - c. federal statute or regulation; and,
 - d. contractual agreements with agencies of the United States.
20. A declaration that, notwithstanding the lack of a legislative appropriation, the Governor and other Executive Branch employees are authorized to undertake such other "critical services," as ordered by this Court, that are necessary to:
 - a. protect the lives, health and safety of those residing in Minnesota; and,

b. safeguard public property against loss or casualty during any period in which government services may be interrupted.

21. Appropriate orders directing the Commissioner of the Department of Finance, and her agents, to issue checks and process such funds as are necessary to pay for the services that are authorized by this Court.

22. Appropriate orders as may be necessary to hold, segregate and maintain such monies collected by the agencies of State Government for later disbursement as authorized by this Court.

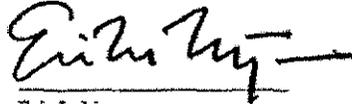
23. The appointment of a Special Master to hear disputes that may arise as to the terms and effects of this Court's Orders, and to make recommendations to the Court as to the nature and extent of any further relief that may be required.

24. An Order authorizing the payment of the reasonable fees and expenses of the Court-appointed Special Master from state funds.

25. Granting of all other relief as may be necessary and just.

Date: June 15, 2005

Respectfully submitted,



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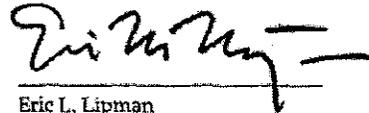
*Attorneys for Petitioner
Governor Tim Pawlenty*

ACKNOWLEDGEMENT

The party on whose behalf this pleading is served, acknowledges, through the undersigned counsel, that sanctions may be imposed pursuant to *Minnesota Statutes* § 549.211 (2004).

June 15, 2005

Date



Eric L. Lipman
Attorneys for Petitioner
Governor Tim Pawlenty

8

STATE OF MINNESOTA	FILED Court Administrator	DISTRICT COURT
COUNTY OF RAMSEY	JUN 15 2005	SECOND JUDICIAL DISTRICT
In the Matter of Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota	By  Deputy	Case Type: Civil
		Court File No. <u>CO-05-5928</u> (Chief Judge Gregg E. Johnson)
		GOVERNOR PAWLENTY'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTIONS FOR INTERVENTION AND LEAVE TO FILE A PETITION FOR RELIEF

The Honorable Tim Pawlenty, Governor of the State of Minnesota, by and through his attorneys, respectfully submits the following Memorandum of Law in Support of his Motions for Intervention and leave to file a Petition for Relief in the above-referenced matter.

FACTUAL BACKGROUND

1. Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to make such appropriations as are necessary for departments of state government to perform delegated functions.

2. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.”

3. Both the Minnesota Constitution and accompanying statutes state clearly that Governor Pawlenty has the duty to “take care that the laws be faithfully executed,” prepare a unified state budget, safeguard state property and manage the operations of Executive Branch agencies. *See*, Minn. Const. Art. V., Sec. 3; *Minnesota Statutes* §§ 4.01; 4.035; 4.07; 4.075 (2004). Moreover, by statute, the Governor has a significant role in the authorization of the use of federal funds by agencies of the Executive Branch. *See*, *Minnesota Statutes* § 3.3005 (2004).

4. The Minnesota Legislature ended its regular session this year on May 23, 2005, without approving appropriation bills for certain “core functions” of state government and other “critical services” of state government. As a result of this failure to appropriate monies, Governor Pawlenty’s ability to fulfill his managerial duties under the Minnesota Constitution is compromised.

5. On May 23, 2005, Governor Pawlenty caused to be filed with the Secretary of State a Proclamation calling members of the Minnesota Legislature into Special Session one minute after the last house adjourned from its 2005 Regular Session. *Compare*, Minn. Const. Art. VI., Sec. 12 with *Proclamation for Special Session 2005* Attachment 2 of the Affidavit of Eric L. Lipman (hereafter “Lipman Affidavit”).

6. Notwithstanding more than 3 weeks of Special Session, the Minnesota Legislature has failed to approve appropriation bills for certain “core functions” of state government and other “critical services” of state government.

7. By way of a hand-delivered letter of June 2, 2005, Governor Pawlenty outlined his plan to petition this Court for “rulings regarding the provision of critical government services and an orderly shutdown of non-critical services, in the event that appropriations are not made by the Legislature by June 30, 2005.” In this same letter, Governor Pawlenty sought the Attorney General’s assessment as to whether he would, or could, serve as legal advisor to the Governor in such action. *See*, Lipman Affidavit, Attachment 3.

8. By way of a hand-delivered letter of June 3, 2005, Attorney General Hatch disclaimed any intention of serving as the Governor’s legal advisor in this matter, explaining that he would proceed as the Petitioner in this action. Moreover, the Attorney General opined that Governor Pawlenty was an adverse party to the Petition that would be filed by him. The Attorney General declared:

In representing [the Minnesota and federal constitutions], I am essentially asking for a judicial order directing you and other state and local officials to provide core services as required by these constitutions. Under no circumstances am I representing you in filing such a petition. Indeed, the Governor is a respondent in such proceeding.

[I]f you wish, you may have your own attorney represent you in responding to the Order for Show Cause. In 2001, Governor Ventura arranged for Diane Drewry, his staff attorney, to appear in support of the petition. If you

wish to have counsel other than this Office represent you, you are free to have such counsel represent you in this proceeding.

See, Lipman Affidavit, Attachment 4 (emphasis added).

9. On June 7, 2005, former Minnesota Attorney General Warren Spannus, offered his assessment of the obligation of Attorney General to accept direction on the objectives of litigation involving the state from the Governor. As Former Attorney General Spannus explains, the Governor's role as the state "client," for the purposes of setting the objectives of state litigation, has been the uniform practice since statehood:

In court appearances of this type, the chief deputy attorney general represents the governor. The governor instructs that attorney as to what his position is, and that is the argument that is presented to the court. The attorney general merely represents the governor; it is not the attorney general's position that is presented to the judge.

Since statehood began more than 140 years ago, the system has worked well, including many instances when the governor and the attorney general were of different political parties

See, Lipman Affidavit, Attachment 5 (emphasis added).

LEGAL ANALYSIS AND ARGUMENT

The Honorable Tim Pawlenty, Governor of the State of Minnesota, is entitled as a matter of right to intervene as a Petitioner in the above-referenced matter and should be permitted to separately Petition for relief from this Court.

I. **GOVERNOR PAWLENTY IS ENTITLED TO INTERVENE IN THIS PROCEEDING AS A PETITIONER, BY RIGHT, BECAUSE HE MEETS THE STANDARDS SET FORTH IN RULE 24.01.**

Rule 24.01 of the Minnesota Rules of Civil Procedure states:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

See, Minn. R. Civ. P. 24.01.

Governor Pawlenty clearly has a fundamental interest in both the management of state property and the funding "transactions" that are at issue in this proceeding. As noted above, both the Minnesota Constitution and accompanying statutes state clearly that Governor Pawlenty has the duty to "take care that the laws be faithfully executed," prepare budget documents, safeguard state property and manage the operations of Executive Branch agencies. *See*, Minn. Const. Art. V., Sec. 3; *Minnesota Statutes* §§ 4.01; 4.035; 4.07; 4.075 (2004). Moreover, the Governor has a significant role in the authorization of the use of federal funds by agencies of the Executive Branch. *See*, *Minnesota Statutes* § 3.3005 (2004).

Short of intervention as a party-Petitioner, Governor Pawlenty's ability to protect these interests is compromised. Attorney General Hatch's Petition in this matter seeks Orders from this Court that would authorize one or more appointees of the Governor to carry out functions that – when appropriations are available – are managed by the

Governor as Chief Executive. *See, e.g.,* Petition, *In the Matter of Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Case No. _____ at 1-2 and 8; *Minnesota Statutes* §§ 3.3005; 4.01; 4.035; 4.07; 4.075 (2004). Yet, as noted above, Attorney General Hatch has specifically disclaimed that he will accept direction from the Governor on the objectives of this litigation, or that the Governor's determinations on the scope and nature of proper relief will be advanced by the Attorney General. *See*, Lipman Affidavit, Attachment 4 at 1-2. Governor Pawlenty is entitled to separate intervention in this matter as a Petitioner.

Likewise, the Governor's intervention request satisfies the requirements of Rule 24 because it is timely – filed within one day of the submission of the underlying petition – and presumably does not prejudice the only other party to the litigation. *Compare, e.g., Norman v. Refsland*, 383 N.W.2d 673, 678 (Minn. 1986) (“under modern practice,” Rule 24 is to be construed so as to encourage all legitimate interventions). Attorney General Hatch has already signified his acceptance of counsel for the Governor participating in this proceeding. *See, id.* at 2.

Lastly, while Governor Pawlenty asserts that he is a proper Petitioner, as a matter of right, in the alternative, he asserts that both of the categories of permissive intervention found in Rule 24.02 of the Minnesota Rules of Civil Procedure would also justify a grant of intervention to him. Governor Pawlenty's claims for relief have more than one “common question of law and fact with the main action” and the main action

relies upon statutes that Governor Pawlenty is constitutionally charged with faithfully administering. This Court should grant Governor Pawlenty's motion to intervene as a Petitioner in this matter.

II. ATTORNEY GENERAL HATCH'S ANALYSIS THAT THE GOVERNOR IS A PARTY-RESPONDENT IS IN ERROR.

In his letter of June 2, 2005, Attorney General Hatch opines that in any action for court-ordered relief following the Legislature's failure to approve appropriation bills, Governor Pawlenty would be a party-Respondent. This analysis is wrong and misguided.

A plain reading of the Constitution makes clear that only the Legislative Branch can approve and present the necessary appropriation bills. *See*, Minn. Const. Art. II, Section 1, Art. IV, Section 20 and Art. IV, Section 22. The Minnesota Constitution does not permit the Governor to promulgate the missing appropriation bills on his own. For this reason, Governor Pawlenty is not a proper Respondent to the Attorney General's Petition for Relief.

When similar questions have been raised in other states, the courts of have held that the Governor is not a proper party-Respondent in those actions which relate to claimed omissions by officials in other branches of government. *See, e.g., Illinois Press Ass'n v. Ryan*, 743 N.E.2d 568, 569-570 (Ill. 2001) (Governor of Illinois was not a proper party-Defendant in a suit challenging the actions of officials in the Legislative Branch);

Glen v. Rockefeller, 313 N.Y.S.2d 938, 943 (Sup. Ct. Spec. Term 1, 1970) (Governor of the State of New York was not a proper party-Defendant in a challenge to the actions of an independent transit authority); accord, *Common Cause of W. Va. V. Tomblin*, 413 S.E.2d 358, 360 (W. Va. 1991) (The “proper respondents” in a case involving the failures of certain legislators to act were “the Speaker of the West Virginia House of Delegates and the President of the West Virginia State Senate”). Unable to authorize the missing appropriations bills himself, the Governor should not be held to answer in this proceeding for the Legislature’s failure to act.¹ Contrary to the views of the Attorney General, Governor Pawlenty is not a proper respondent in this proceeding.

III. GOVERNOR PAWLENTY SHOULD BE PERMITTED TO FILE HIS PETITION FOR RELIEF.

The accompanying *Petition of Governor Tim Pawlenty* is similar, but not identical to, the Petition filed in this matter by the Attorney General. As to important elements of the prayer for relief, the Governor’s Petition differs in scope and specifics from the Petition filed in this matter by the Attorney General. Accordingly, so as to accomplish a

¹ Another clue that the Governor is not a proper Respondent in this type of proceeding is the claim for relief itself. If there were a mandated duty in the appropriation process that had not been fulfilled by this Governor – and there is none – the Attorney General would have requested a Writ of Mandamus directing the Governor to fulfill the uncompleted duty. Compare, generally, *State ex rel. Goar v. Hoffman*, 296 N.W. 24, 25 (Minn. 1941); *Pole v. Trudeau*, 516 N.W.2d 217, 219 (Minn. App. 1994). Yet, no such request has been made, or could be made, to the Court.

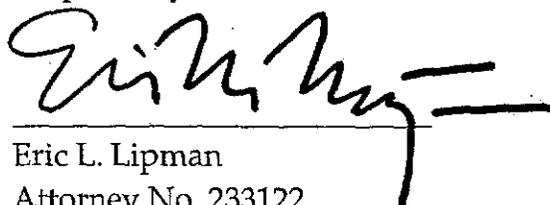
complete and just resolution of all of the various claims for relief, Governor Pawlenty should be granted leave to file his Petition.

CONCLUSION

For the reasons stated above, Governor Tim Pawlenty respectfully requests intervention as a Petitioner in the above-referenced matter and leave to separately Petition for relief from this Court.

Date: June 15, 2005

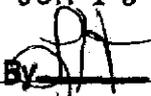
Respectfully submitted,



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*Attorneys for Petitioner
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<p>STATE OF MINNESOTA</p> <p>COUNTY OF RAMSEY</p> <p>In the Matter of Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota</p> <p style="text-align: center;">FILED Court Administrator</p> <p style="text-align: center;">JUN 15 2005</p> <p style="text-align: center;">By:  Deputy</p>	<p style="text-align: right;">DISTRICT COURT</p> <p style="text-align: right;">SECOND JUDICIAL DISTRICT</p> <p style="text-align: right;">Case Type: Civil</p> <p style="text-align: right;">Court File No. <u>CO-05-5928</u></p> <p style="text-align: right;">AFFIDAVIT OF ERIC L. LIPMAN</p>
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I, Eric L. Lipman, being duly sworn on oath, deposes and states as follows:

1. I am the Acting General Counsel for Governor Tim Pawlenty, and duly licensed to practice law in the State of Minnesota.
2. Accompanying this Affidavit as Attachment 1 is a true and correct copy of the listing of Core Functions and Critical Services of State Government as developed by officials of the Minnesota Department of Employee Relations.
3. Accompanying this Affidavit as Attachment 2 is a true and correct copy of the *Proclamation for Special Session 2005* filed on May 23, 2005.
4. Accompanying this Affidavit as Attachment 3 is a true and correct copy of a letter from Governor Pawlenty to Attorney General Hatch, dated June 2, 2005.
5. Accompanying this Affidavit as Attachment 4 is a true and correct copy of a letter from Attorney General Hatch to Governor Pawlenty, dated June 3, 2005.

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL / NON-CORE EMPLOYEES
ACCOUNTANCY BOARD Total Employees: 5	# of employees = 1 \$1,160 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none">• Renewal of licenses Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	4
AGRICULTURE DEPT Total Employees: 500 * Shared Services reduces critical/core employees by 10	# of employees = 97 \$113,000 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none">• Commercial Feed Regulation• Agricultural Chemical Emergency Response• Food Inspection• Dairy Inspection• Food Safety Emergency & Food Re-inspection• State Meat Inspection• Laboratory Services<ul style="list-style-type: none">• Agronomy Analysis/Ag Chemical Emergency Response• Food Safety Emergencies/Dairy and Food Inspection Services• Monitoring and Regulatory Analysis to State Meat Inspection Program• Regulatory Analysis for Commercial Feed• Nuclear Response• Biological Control Program• Monitor and control invasive species of exotic plant diseases and pests• Soybean Rust• MDA Lab & Bldg. Construction• Core administrative support, including payroll processing Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down. Portions or all of this agency use non-appropriated funds as revenue source: # of employees = 42 <ul style="list-style-type: none">• Farmers Market Nutrition Program• Grain Inspection• Seed Potato Inspection• Grain Licensing and Auditing Program• Livestock Weighing• Fruit and Vegetable Inspection	361
ANIMAL HEALTH BOARD Total Employees: 36	# of employees = 4 \$6,983 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none">• Investigate suspect rabies cases; and,• Investigate suspect foreign animal disease cases. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	32

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL/ NON-CORE EMPLOYEES
ARCHITECTURE, ENGINEERING BD Total Employees: 9	# of employees = 1 \$1,160 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none">• Renewal of licenses Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	8
ARTS BOARD Total Employees: 13	Closed	13
BARBER AND COSMETOLOGY EXAMINERS BOARD Total Employees: 6	Closed	6
BEHAVIORAL HEALTH & THERAPY BOARD Total employees: 5	# of employees = 2 \$2,320 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none">• Renewal of licenses Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	3
CENTER FOR ARTS EDUCATION Total Employees: 93	# of employees = 2 \$2,320 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none">• Property Security Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	91
CHIROPRACTIC EXAMINERS BOARD Total Employees: 5	# of employees = 1 \$1,160 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none">• Renewal of licenses Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	4

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON- CRITICAL/ NON-CORE EMPLOYEES
COMMERCE DEPT Total Employees: 328	# of employees = 5 \$7,610 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Pre-payment for the Minnesota Message Relay Service • Preserve state's interest in pending litigation and on-going regulatory investigations • On-call payroll processing and IT system support Current licenses remain in effect if renewal applications are submitted to the Department of Commerce by 6/30/05 or the appropriate renewal deadline. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	323
DENTISTRY BOARD Total Employees: 11	# of employees = 4 \$4,640 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Respond to complaints about dental professionals • Issue disciplinary actions • Renewal of licenses Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	7
DIETETICS & NUTRITION PRACTICE Total Employees: 2	Closed	2
DISABILITY COUNCIL Total Employees: 6	Closed	6

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL / NON-CORE EMPLOYEES
<p>EDUCATION</p> <p>Total Employees: 422</p>	<p># of employees = 28.5 \$33,230 / week personnel costs</p> <p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Maltreatment of Minors Program • Support operations to critical functions, including on-call payroll processing • Administrative Management and Communications • Protection of state buildings and other property owned by the government • Critical State Categorical and Formula Aids <ul style="list-style-type: none"> ✓ General Education aid, including all linkages to the formula (compensatory, limited English proficiency, extended sparsity, operating capital, training and experience, equity, transition and referendum aid) ✓ Special education-regular and excess ✓ Cost aid transition for disabled students aid; aid for children with disabilities ✓ Tribal contract aid ✓ Alternative teacher compensation aid ✓ Charter school building lease aid ✓ School lunch aid; school breakfast aid ✓ Adults with disabilities aid • Critical Federal Formula Aids <ul style="list-style-type: none"> ✓ Special Education Formula Aid; Special Education Pre-school Formula Aid ✓ Special Education Grants for Infants and Families with Disability ✓ Title I Formula Aid ✓ Title I Program for Neglected and Delinquent ✓ Title II – Part A Improving Teacher Quality and Teacher Quality Enhancement ✓ Title II – Education Technology Grants Formula Grants ✓ Title V Formula Aid ✓ Federal Food Program Breakfast; Federal Food Program Lunch; Federal Food Program Special Milk ✓ CACFP Food Service; CACFP Commodities ✓ Summer Food Program for Children • No Child Left Behind (NCLB) • Teacher and Administrator Licensing <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support this operation is authorized in the event of a government shut down.</p>	393.5
<p>EMERGENCY MEDICAL SERVICES BD</p> <p>Total Employees: 23</p>	<p># of employees = 7 \$8,120 / week personnel costs</p> <p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Ensuring ambulance coverage in the area of disaster declared by Governor's emergency management response team (On-call only) • Toxicology line • Receive, investigate, and resolve complaints from public • Monitor health professionals in HPSP program • Renewal of licenses <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>	16

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL / NON-CORE EMPLOYEES
EMPLOYMENT & ECONOMIC DEVELOPMENT (DEED) Total Employees: 1693	# of employees = 64 \$99,840 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Unemployment Insurance Benefit Payments and Initial Claims • Process claims for social security disability payments • Public Facilities Authority bond obligation on-call services • Business and Community Development Projects (on-call technical assistance) • On-call payroll processing Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	1629
ENVIRONMENTAL ASSISTANCE Total Employees: 63	Closed	63
EXPLORE MINNESOTA TOURISM Total Employees: 59	Closed	59
FARIBAULT ACADEMIES Total Employees: 267	# of employees = 56 \$60,000 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Security personnel necessary to provide 24/7 coverage of two sites (16 state buildings) and 60+ acres of government land at an estimated value of \$80-\$100 million. • Continuation of July 5-22, 2005 Preparatory Assistance Summer School (PASS) required under Federal Law 94-142 and Minnesota Statute 125A, Individual Disability Education Act (IDEA). Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	211

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS	# OF NON-CRITICAL / NON-CORE EMPLOYEES
# of current employees	That May Remain Open All Others Closed	

<p>HEALTH DEPT</p> <p>Total Employees: 1392</p>	<p># of employees = 209 \$ 342,750 / week personnel costs</p> <p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Investigate and respond to Disease Outbreaks • Core Public Health Laboratory Capacity • Health Facilities Complaint Investigation • Safeguard Public Health Data • Emergency Response to biological / chemical / radiological / nuclear and other public health emergencies • Public Health Management & Communications • Facility Security • Health and safety inspections of nursing homes, hospitals, and home health care facilities • Food inspection and food safety or security • Inspections of municipal water supply systems, swimming pools, water well drillers • Routine and non-emergency disease outbreak and intervention activities • All health occupations licensing and inspection activities • Issuance of birth and death certificates • WIC (Women, Infants and Children) Program • Administrative support, including payroll processing <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>	<p>1183</p>
<p>HOUSING FINANCE AGENCY</p> <p>Total Employees: 185</p>	<p># of employees = 185</p> <p>Portions or all of this agency use statutorily appropriated funds as revenue source:</p> <ul style="list-style-type: none"> • All Functions 	<p>0</p>

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL / NON-CORE EMPLOYEES
HUMAN SERVICES DEPT Total Employees: 6848	<p># of employees = 4080 \$5 million / week payroll \$117 million / week benefits</p> <p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • State Operated Services inpatient and outpatient treatment for mentally ill (MI), chemically dependent (CD), psychopathic personalities (PP), Minnesota Extended Treatment Options (METO) & nursing home; residential services for persons with developmental disabilities (DD); day training and habilitation (DT&H) programs; mental health initiative (MHI); medication administration; MHI – crisis response teams; and DD Community Support Services (CSS); in home support staff; and DD CSS limited triage staff to respond to DD crisis. • State operated services system-wide support and oversight for client treatment services. • Cash, child care and food assistance to families & individuals. Monthly and daily issuance for cash & food. • Child Support Payments: receipt and disbursement; PRISM maintenance and operation for county Child Support agencies. • Adoption Assistance Payments/Relative Custody Assistance • Health care - Medical Assistance, General Assistance Medical Care, & Minnesota Care • Payments to the following MA providers: personal care attendants (PCAs), private duty nursing services; home health agencies; pharmacy services; waiver services, including CAC, CADI, MR/RC, TBI, Elderly and Alternative Care; nursing homes (SNF/ICF); volume purchasing for oxygen; children's therapeutic support services (CTSS); adult residential mental health services (ARMHS); mental health crisis services; intensive residential treatment services (IRTS); Rural Health clinics; and Federally Qualified Health Clinics. • Processing premium payments for MinnesotaCare enrollees. • HIV/AIDS program. • Senior nutrition and home delivered meals. • Ombudsman for Older MN. • Guardianship Services. • Maintain State-wide Social Service Information System Health Network support to county servers. • Commodity Distribution via TEFAP (The Emergency Food Assistance Program and USDA). • MA/EPD approval for late payments requests for good cause. • Approval of Nursing Home Admissions for persons under 21. • Approval of OBRA Level 1 and 2 Nursing Home Admission Screening Documents. Transitional Housing and Emergency Services Program • Community Action and Community Services Block Grants • Deaf blind support services, intervenor and independent living services for adult deaf blind • Residential and community mental health services for deaf, deaf blind, and hard of hearing • Services for Deaf and Hard of Hearing • Applicant background checks for persons working in programs licensed by DHS and MDH Building Construction-Project Management / Converged Network Development • Findings issued in Special Review Board Hearings already held <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p> <p>Portions or all of this agency use statutorily appropriated funds as revenue source:</p> <ul style="list-style-type: none"> • State Operated Services—Outside Laundry Contracts 	2768

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL/ NON-CORE EMPLOYEES
IRON RANGE RESOURCES & REHAB Total Employees: 135	# of employees = 135 Portions or all of this agency use statutorily appropriated funds as revenue source: <ul style="list-style-type: none"> All Functions 	0
LABOR AND INDUSTRY DEPT Total Employees: 373 <ul style="list-style-type: none"> Shared services reduce critical/core employees by 5 	# of employees = 39 \$68,250 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> Limited Workplace Safety/Health Regulation-Response to fatalities, imminent danger and catastrophic workplace events. Boiler Vessel & High Pressure Piping - Routine inspections and inspections of system failures causing fatal or imminent danger and continued licensing of operators Child Labor Regulation Benefit Payments to Injured Workers Routine electrical inspections, carnival events, and license renewals for current electricians (Board of Electricity) Elevator Inspections on-call for accidents Plumbing inspections on new and remodeled construction projects Plumber license renewals DLI Central and Technology Services, including payroll processing Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down. Portions or all of this agency use non-appropriated funds as revenue source: # of employees = 3 <ul style="list-style-type: none"> Building codes and standards inspections of elevators, manufactured homes, and building inspections on projects located throughout the state. 	331
MARRIAGE & FAMILY THERAPY BD Total Employees: 2	# of employees = 1 \$1,160 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> Renewal of licenses Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	1
MEDIATION SERVICES DEPT Total Employees: 16	Closed	16

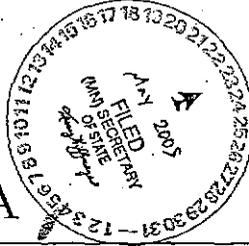
2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL / NON-CORE EMPLOYEES
MEDICAL PRACTICE BOARD Total Employees: 23	# of employees = 7 \$7,500 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Processing and investigating complaints against physicians and other health care providers alleging unsafe or illegal health care practices. • Issuing new licenses and permits to physicians and other regulated health care providers. • Renewal of licenses and registrations to physicians and other health care providers in order that they may continue to practice medicine legally. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	16
METROPOLITAN COUNCIL TRANSIT	# of employees = 3,660 Portions or all of this agency use other funds as revenue source: <ul style="list-style-type: none"> • Metro-Mobility • Metro Transit services (one month only) • Contracted regular routes (one month only) • Community Programs • Opt-Out Community Services 	0
NATURAL RESOURCES DEPT Total Employees: 2474	# of employees = 211 \$245,000 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Provide law enforcement, public safety, and safety training <ul style="list-style-type: none"> • Enforce hunting, Off-Highway (OHV) vehicle and watercraft laws • Wetlands law enforcement • Firearms and vehicle safety training • Fire Suppression • Flood and Dam Safety Response • Hazmat Response • Fish Hatchery-Custodial, to keep hatchery fish alive • Tree Nursery-Custodial, to water nursery trees to keep them alive • On-call payroll services Note: Others (up to 75) may be added in event of emergencies such as fire, flood, tornado, etc. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	2263
NURSING BOARD Total Employees: 25	# of employees = 6 \$4,800 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Processing complaints alleging unsafe nursing practices. • Issuing of licenses/temporary permits to practice nursing • Renewal of licensure Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	19

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL / NON-CORE EMPLOYEES
NURSING HOME ADMIN BD Total Employees: 4	# of employees = 1 * = 2 \$3,480 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> Investigate complaints Take disciplinary action Issue and renewal of licenses * NHAB administers IT, HR, and payroll services for 15 health related boards. Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	1
OMBUDSMAN MH/MR Total Employees: 18	# of employees = 4 \$4,640 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> Individual Client Services/Investigations or Reviews Death and Serious Injury Review Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	14
OMBUDSPERSON FOR FAMILIES Total Employees: 3	Closed	3
OPTOMETRY BOARD Total Employees: 2	# of employees = 1 \$1,160 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> Investigate complaints regarding optometrists Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	1
PHARMACY BOARD Total Employees: 16	# of employees = 6 \$6,960 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> Investigate complaints Renewal of licenses Inspect pharmacies, wholesalers, certain researchers Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	10
PHYSICAL THERAPY BOARD Total Employees: 2	Closed	2

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL / NON-CORE EMPLOYEES
PODIATRIC MEDICINE BOARD Total Employees: 1	# of employees = .5 \$580 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Renewal of licenses Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	.5
POLLUTION CONTROL AGENCY Total Employees: 774	# of employees = 26 \$52,000 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Emergency Response Remediation • Maintenance and monitoring of ongoing remedial systems at state owned closed landfills, LUST fund financed sites, and Superfund sites • Air quality monitoring and air quality health alerts • Training and licensing of environmental professionals • On-call payroll services Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	748
PSYCHOLOGY BOARD Total Employees: 9	# of employees = 3 \$3,480 / week personnel costs The following portions of your critical operations plan have been approved: <ul style="list-style-type: none"> • Renewal of licenses Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.	6

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL/ NON-CORE EMPLOYEES
PUBLIC SAFETY DEPT Total Employees: 1515	<p># of employees = 712 \$830,190 / week personnel costs</p> <p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • State Patrol <ul style="list-style-type: none"> • All road troopers and selected supervisors • All Radio Communications Officers and supervisors • Capitol Security • Investigate all highway crashes and fatalities • Enforcement of commercial vehicles • School bus safety equipment and driver inspections • Weigh scales will be open • Flight or air support provided to local police agencies • Special response team will support local police agencies • Motor vehicle crash reports remain available • Pipeline Safety <ul style="list-style-type: none"> • Investigation and oversight of gas and hazardous liquids • Hazardous response • Federal inspection and infrastructure security • Driver and Vehicle Services <ul style="list-style-type: none"> • Driver's license renewals and duplicates • Commercial driver renewals and HazMat endorsements • Perform status checks for extensions for temporary residents • Driver evaluation hearings to meet due process requirements • Inspection of licensed motor vehicle dealers • Administrative support for IT, payroll processing and communications • Commissioner/State Homeland Security Director <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>	803
PUBLIC UTILITIES COMM Total Employees: 41	Closed	41
SOCIAL WORK BOARD Total Employees: 10	<p># of employees = 2 \$2,320 / week personnel costs</p> <p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Renewal of licenses <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>	8

2005 AGENCY SHUTDOWN DETERMINATIONS		
AGENCY # of current employees	CRITICAL and/or CORE OPERATIONS OR OPERATIONS IN DIRECT SUPPORT OF CRITICAL and/or CORE OPERATIONS That May Remain Open All Others Closed	# OF NON-CRITICAL / NON-CORE EMPLOYEES
TRANSPORTATION DEPT Total Employees: 4851	<p># of employees: 864 \$1.35 million / week personnel costs</p> <p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Provide highway operations and maintenance emergency services affecting the safety of the public; <ul style="list-style-type: none"> • Barricade replacement • Repair damaged guardrails or replace any removed construction site barriers • Repair hazardous conditions on roadways (pavement blow-ups, obstructions, wash-outs, etc.) • Traffic signal repair; stop and yield sign replacement • Continuation of active (200) construction projects • Hazardous Material Incident Response • Stillwater Lift Bridge operation • Continue ramp meters and MnPASS Hot Lane operations • Assessment of traffic damage to bridges • Maintain aeronautic navigation systems • Maintain pilot weather information systems • Provide computer and communications affecting the State Patrol in shared facilities • Provide Gopher One responses • Provide essential department leadership and management, communications, and support services • Continue to process payment for active county/municipal state aid projects; critical project plan review <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>	3987
VETERANS HOME BOARD Total Employees: 1049	<p># of employees = 874 \$961,000 / week personnel costs</p> <p>The following portions of your critical operations plan have been approved:</p> <ul style="list-style-type: none"> • Direct Care and Supporting Operations <p>Only staff and operating expenses that are minimally necessary to continue, secure, or support these operations are authorized in the event of a government shut down.</p>	175
VETERINARY MEDICINE BD Total Employees: 2	Closed	2
WATER & SOIL RESOURCES BOARD Total Employees: 59	Closed	59
WORKERS COMP COURT OF APPEALS Total Employees: 15	Closed	15
ZOOLOGICAL BOARD/Minnesota Zoo Total Employees: 222	<p># of employees = 222</p> <p>Portions or all of this agency use other funds as revenue source:</p> <ul style="list-style-type: none"> • All Functions 	0



STATE of MINNESOTA

Proclamation

PROCLAMATION FOR SPECIAL SESSION 2005

WHEREAS: The Eighty-Fourth Legislature will adjourn from its 2005 session without enacting legislation essential to the health, well-being and safety of the citizens of Minnesota; and

WHEREAS: The unfinished matters of the Legislature include essential laws regarding agriculture, economic development, education, environment, health, human services, transportation, taxes, and the orderly functioning of state government; and

WHEREAS: After the time permitted by law for passage of such legislation during the 2005 regular session expires, an extraordinary occasion as envisioned by Article IV, Section 12 of the Minnesota Constitution is thereby created; and

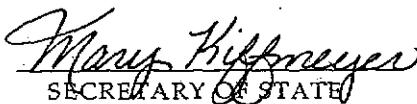
WHEREAS: The people of Minnesota are best served by avoidance of a government shutdown and a prompt conclusion of legislative business.

NOW THEREFORE, I, TIM PAWLNTY, Governor of Minnesota, do hereby summon you, members of the Legislature, to convene in Special Session one minute after the last house of the Legislature adjourns its regular session on Monday, May 23, 2005, pursuant to Article IV, Section 12, at the State Capitol in St. Paul, Minnesota.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Minnesota to be affixed at the State Capitol this twenty-third day of May in the year of our Lord two thousand and five, and of the State the one hundred forty-seventh.




GOVERNOR


SECRETARY OF STATE



STATE OF MINNESOTA

Office of Governor Tim Pawlenty

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

June 2, 2005

BY HAND DELIVERY - URGENT

Honorable Mike Hatch
Attorney General
102 State Capitol
St. Paul, Minnesota 55155

Dear Attorney General Hatch:

On May 23, 2005, the Minnesota Legislature adjourned from its 2005 session without approving a number of important appropriation bills. As you know, approval of these measures by the Legislature was required, if certain services and activities are to continue on July 1, 2005 and beyond.

It is my fervent hope that the Legislature will pass bills during the current Special Session to avoid a discontinuation (or "shutdown") of those services. However, given the possibility that the Legislature may not present bills that could be signed into law, my Administration is making contingency preparations for a partial shutdown.

Article V, Section 3 of the Minnesota Constitution requires me to "take care that the laws be faithfully executed." I am preparing to fulfill this obligation in the event that the Legislature fails to act. So as to avoid confusion and controversy over the actions to be taken during a partial government shutdown, I plan to petition the state courts for orders to clarify the steps my Administration can take in the event of a shutdown. I will request the court to issue rulings regarding the provision of essential government services and an orderly shutdown of non-essential services, in the event that appropriations are not made by the Legislature by June 30, 2005.

We would like to initiate the appropriate court proceedings in the near future. The Attorney General is the legal advisor for Executive Officers of the State. Under ordinary circumstances, your office would represent me as the Petitioner in this matter.

However, an additional issue should be addressed in advance of such an action. It is my understanding that you are actively exploring a bid for Governor in 2006, and that a great deal of the focus of your efforts has consisted of sharp criticism of my Administration and me.

As you are aware, the Rules of Professional Conduct state that lawyers should not undertake representation in cases in which the lawyer's own interests might interfere with his exercise of independent judgment, providing detached advice or the diligent pursuit of actions on behalf of clients. See, Minn. R. Prof. Conduct 1.7 and Comment.

Given your political activities, and the resulting competing loyalties, I question whether you or your office can, or should, represent my Administration with respect to the scope of executive powers and decision-making in the event of a government shutdown. Under these same rules, this is a matter that you must address and resolve first. *Id.* ("Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation").

If a conflict exists in this matter, or your interests will preclude you from accepting direction on the objectives of this litigation, I am willing to exercise my powers under *Minnesota Statutes* § 8.06 and appoint substitute counsel.

A new version of the litigation that occurred in 2001 is certain to be difficult and complicated. See, *In re Temporary Funding of Core Functions of the Executive Branch*, C9-01-5725 (Ramsey Dist. Ct. 2001). I am sending this letter, and seek your genuine assessment, in good faith, because the 2006 election should not compromise the public's interest.

Because of the special importance of this matter, I request that you provide me with your assessment – as to whether there is a conflict which impairs your ability to be a dedicated and zealous advocate for the Administration's objectives in this matter – by the 12 o'clock noon on Tuesday, June 7, 2005.

If you do not believe that such a conflict exists, and you will appear on my behalf in the planned litigation, I further request an opportunity for our staffs to discuss preparations

for the litigation and an orderly process for the pre-filing review of pleadings. Please contact Eric Lipman of my staff in order to find a mutually convenient time to meet.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Pawlenty', written in a cursive style.

Tim Pawlenty
Governor



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

June 3, 2005

MIKE HATCH
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (651) 296-6196

The Honorable Tim Pawlenty
Office of the Governor
State of Minnesota
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RECEIVED
OFFICE OF THE GOVERNOR
STATE OF MINNESOTA
2005 JUN - 3 P 3: 22

Dear Governor Pawlenty:

I thank you for your letter dated June 2, 2005. Curiously, I received a copy of your letter from a member of the media prior to receiving the letter from your Office.

Your letter asks about judicial intervention in the event there is a government shutdown. You also ask whether there is a conflict of interest if I represent the State of Minnesota in filing a petition in court.

This letter will describe the framework of the process.

First, I enclose as Exhibit 1 a copy of the Petition filed in a similar case in 2001. I filed the Petition because our state and federal constitutions require that certain core services of government be provided to the citizens. In addition, federal statutes require state and local government to carry out certain functions. The lawsuit was commenced by an Order to Show Cause (Exhibit 2) being served upon those government officials who are charged with carrying out those functions, which include the governor, the commissioners, the counties, the school districts, and certain other governmental entities. There were over 500 public officials, in addition to your predecessor, that were served. (Exhibit 3.) The Order to Show Cause states that the State is requesting a court order requiring the officials to carry out certain services of government as required by the constitutions and by federal law. The Order requires these public officials to appear in court if they object to such an Order being issued.

Second, in preparation for the 2001 Petition, Governor Ventura and his administration prepared a list of core services that they believed were required by the constitutions. This list is attached as Exhibit 4. In preparing the list, the Governor was advised by this Office to use the definition of "core services" as being similar to the definition of "essential services" as defined by the Office of Management and Budget ("OMB") in the 1995 federal government shutdown. I refer you to pages 6-11 of my 2001 Oral Argument for a list of such services. (Exhibit 5.) I advised your Office last week that we are preparing a similar petition and requested that you prepare a similar list of what you believe are core services required by the constitutions. If we do not receive such a list, we will rely upon the list that was prepared by Governor Ventura and the definition of core function set forth in my Oral Argument and referred to in our 2001 Memorandum of Law. (Exhibit 6.)

The Honorable Tim Pawlenty

June 3, 2005

Page 2

Third, I do not have a conflict of interest with the State of Minnesota in filing this petition. As noted in my 2001 Oral Argument, I am carrying out my responsibilities under the Minnesota and federal constitutions, which I took an oath to uphold. In representing these two grand charters, I am essentially asking for a judicial order directing you and other state and local officials to provide core services as required by these constitutions. Under no circumstances am I representing you in filing such a petition. Indeed, the Governor is a respondent in such a proceeding.

Fourth, if you wish, you may have your own attorney represent you in responding to the Order to Show Cause. In 2001, Governor Ventura arranged for Diane Drewry, his staff attorney, to appear in court in support of the petition. If you wish to have counsel other than this Office represent you, you are free to have such counsel represent you in this proceeding.

Fifth, please note that in 2001 we requested the court to order, and it did so order, that a special master be appointed to mediate issues that may arise as to whether a particular service is a "core function" of government. (Exhibit 7.) We will request the court to appoint a special master in this proceeding as well.

Finally, the petition for such a court order is rare and should only be undertaken as a last resort. The essence of the petition is that public officials in the executive branch and the legislative branch have not carried out their duties to fund certain core services as required by the constitution and by federal law. I will file the petition with great reluctance, as it should be seen as a mark of failure, not success, of state government. If I did not file the petition, however, the State would be inundated with lawsuits from people whose life, liberty, or property, as guaranteed by our constitutions, are placed in jeopardy.

I implore you to meet with legislative leaders and resolve the budget issues remaining to be addressed. I suggest that you consider utilizing the services of former governors who have successfully resolved budget disputes, such as Governors Al Quie, Wendell Anderson, or Arne Carlson, to mediate the differences between you and the legislative leaders.

Very truly yours,



MIKE HATCH

Attorney General

State of Minnesota

P.S. It is not becoming for either of our offices, and it did not advance the interests of the State of Minnesota, to have these issues paraded in the media. I was surprised and bemused in having your letter delivered through the media, and necessarily you have put me in a position to respond to the media. It is far more professional, however, if these issues are given deliberate review without such fanfare.

MAH:as/AG: #1430748-v1

Letters from readers

Published June 7, 2005

Clogging the courts

How are Minnesota's already strained courts going to handle the thousands of additional cases generated by the new "photo-cop" system used to catch drivers who run red lights (Star Tribune, June 5)?

Using fines until the third offense would eliminate annoying reports to insurance companies as well as the additional burden on the courts.

Mike Oien, Minneapolis.

A better idea

Red-light cameras can surely cut down on dangerous red-light running, but there is an even easier solution.

Fairfax County in Virginia increased the timing of its yellow lights by two seconds every cycle, and found that red-light violators at one intersection dropped by 94 percent. The red-light camera at that intersection wrote less than one ticket a day.

San Diego has also noticed this fact and cancelled its enforcement contract. There are miles of academic studies clearly showing that cameras do not work as well as signal improvements. Think of who benefits from increased traffic ticket and insurance charges -- it won't be W. Broadway and Lyndale Avenue N.

Josh Gatling, Minneapolis.

Worked for 140 years

The governor's office wants a special counsel to represent the governor other than the attorney general in preparing a possible court appearance leading to a government shutdown (Star Tribune, June 3).

Nonsense, wasteful nonsense.

In court appearances of this type, the chief deputy attorney general represents the governor. The governor instructs that attorney as to what his position is, and that is the argument that is presented to the court. The attorney general merely represents the governor; it is not the attorney general's position that is presented to the judge.

Since statehood began more than 140 years ago, the system has worked well, including many instances when the governor and the attorney general were of different political parties, and, hard to believe, but both of them may have had ongoing political aspirations.

To ask for special counsel for the reasons stated is wrong, costly and totally unnecessary.

Warren Spannaus, Minneapolis;

state attorney general, 1970-82.

10.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

FILED

SECOND JUDICIAL DISTRICT

JUN 21 2005

CASE TYPE: Civil

COURT ADMINISTRATOR
By JA Deputy

COURT FILE NO.: C0-05-5928
(Chief Judge Gregg E. Johnson)

**AMICUS CURIAE MEMORANDUM OF
CARE PROVIDERS OF MINNESOTA**

In Re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota

**AND
MINNESOTA HEALTH & HOUSING ALLIANCE
IN SUPPORT OF TEMPORARY FUNDING OF
GOVERNMENT ASSISTANCE PROGRAMS
SERVING VULNERABLE CITIZENS**

I. INTRODUCTION

Care Providers of Minnesota and the Minnesota Health and Housing Alliance ("MHHA") respectfully request this Court grant the Motions of Petitioners Governor Tim Pawlenty and Attorney General Mike Hatch with respect to funding, temporarily, the payment of medical assistance, general assistance and a variety of federal and government programs designed to assure for the safety and welfare of its citizens.¹ MHHA and Care Providers hereby offer this *amicus curiae* Memorandum in Support.

Public assistance beneficiaries receiving necessary health care have a right to unimpeded services covered by established state and federal programs. Sustaining payment to vendors who provide necessary care and services to Minnesota's most vulnerable citizens is, in *amici's* view, required by both federal and state law and is consistent with state public policy, as set by statute and the Minnesota Constitution. As organizations reliant on continued

¹Governor Pawlenty and Attorney General Hatch filed separate petitions seeking comparable judicial relief.

government payments to provide necessary care to their public assistance residents, patients and clients, Minnesota Medical Assistance providers have no alternative sources of revenue to pay for the care these vulnerable Minnesotans must receive. For the year ending September 30, 2003, 62.9% of all resident days in Minnesota nursing facilities were paid by Medical Assistance. Many providers would likely not have financing sufficient to weather a cessation of the government payments: eighty-nine metro-area nursing facilities that responded to a survey mailed in December 2004 reported a median of 4.6 days of cash on hand.² Many other providers rely on payments from Minnesota's Elderly Waiver program to pay for the assisted living services they supply to elderly and disabled citizens who are able to live outside nursing homes.

Care Providers and MHHA are concerned a cessation of payment of Medical Assistance health care benefits could have a *domino effect* that impedes, reduces or eliminates access to health care services needed by other Minnesotans, as well. Some Minnesotans enjoy long term care or other services paid for by programs such as Medicare, the Veterans Administration, or managed care, and others pay privately. Although their sources of payment are not directly affected by a delay in passing a state budget, these Minnesotans often receive their services from providers who also serve a large number of patients and residents covered

² "Financial Condition of Minnesota's Nursing Facilities: 2004," Data collected, analyzed and reported by Larson, Allen, Weishair and Co. (March 2005)

by public assistance. Remove payment for public assistance beneficiaries, and those vendors' financial viability to provide services to anyone is impacted dramatically.³

Faced with a similar threat of a government shutdown, on June 29, 2001 this Court approved an order that funded, temporarily, certain "core functions" of the Minnesota state government. *Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding*, Ramsey County District Court No. C9-01-5725 (Chief Judge L. Cohen, June 29, 2001), attached as *Amicus Ex. 1*.⁴ In addition to finding that the Minnesota Medicaid program is a core function that merits continued funding, this Court held that

the Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.

Slip. Op. at 7, ¶ 8. As explained below, the June 29, 2001 reasoning of this Court is sound.⁵

The United States Constitution, the federal Medicaid laws and state common law allowing continued payment of Medical Assistance to avoid endangering beneficiaries provide ample legal authority for this Court to avert a shutdown of core functions.

³ In addition to the direct and immediate impact on public assistance beneficiaries, such as nursing home residents covered by Medical Assistance, any cessation of payment to vendors could have lingering complications on future access to services. Even the shortest cessation of state payments to nursing homes, facilities for individuals with developmental disabilities and other providers could have lasting repercussions on the future ability to attract qualified staff to this professional calling, if current and prospective employees realize their paychecks are tied to any delays in the state budget.

⁴Exhibit 1 is a copy of the proposed Order presented and approved on July 29, 2001.

⁵Within hours of Judge Cohen's June 29, 2001 Order, the legislative impasse was resolved.

II. BACKGROUND FACTS AND LAWS

- a. **MHHA and Care Providers represent organizations who provide care and services to public assistance beneficiaries.**

Care Providers of Minnesota and MHHA are trade associations established in 1947 and 1967, respectively. They are both supportive partners for long-term care members. Each organization now represents a widely diversified group of providers, from traditional nursing facilities to highly specialized subacute centers and every type of disability services and senior housing provider. See, MHHA website at www.mhha.com and Care Providers of Minnesota website at www.careproviders.org.

Care Providers of Minnesota and MHHA launched a joint venture known as the Long Term Care Imperative in 1999. The Imperative advances innovative ideas for delivering and funding quality senior services throughout Minnesota.

- b. **The state-administered Medical Assistance Program pays for necessary care and services rendered to vulnerable state and federal beneficiaries by amici's members and that program, along with related law, identifies who is receiving core or essential services from state government.**

An overwhelming percentage of the members of MHHA and Care Providers of Minnesota are certified as providers in the Minnesota Medical Assistance program,⁶ codified at Minn. Stat. ch. 256B. Although administered by the State of Minnesota, Medical Assistance is funded jointly by the federal and state governments. Minn. Stat. § 256B.01 underscores the public policy behind Medical Assistance:

⁶The Medical Assistance program is also known by its federal name, the Medicaid program.

Policy. Medical assistance for needy persons whose resources are not adequate to meet the cost of such care is hereby declared to be a matter of state concern. To provide for such care, a state-wide program of medical assistance, with free choice of vendor, is hereby established.

Minn. Stat. § 256B.01. In addition to the state and related federal laws governing eligibility for Medical Assistance benefits, *see, e.g.*, Minn. Stat. §§ 256B.057, 256B.0575, the State of Minnesota has also enacted state maltreatment reporting and prevention laws which automatically define medical assistance beneficiaries receiving services from certain facilities, such as nursing homes, residential facilities, nonresidential facilities and home care providers, as “vulnerable” for the purposes of protection from maltreatment:

Policy. *The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated.*

Minn. Stat. § 626.557, subd. 1. (emphasis added). *See also*, Minn. Stat. § 626.5572, subd. 21 (definition of Vulnerable Adult); § 626.5572, subd. 6 (definition of facility). Similar protection is afforded Minnesota’s children by the Maltreatment of Minors Act, Minn. Stat. § 626.556, subd. 1, subd. 10d.

MHHA and Care Providers assert anyone eligible to receive benefits under the Medical Assistance program, or defined as a vulnerable adult or minor receiving institutional services under the Vulnerable Adults Act and Maltreatment of Minors Act, respectively, must continue to receive services from participating providers. An Order by this Court will assure the State will continue payment to these essential providers, despite the absence of a state budget for the fiscal year beginning July 1, 2005.

- c. **The State of Minnesota must honor its federal obligations arising from its participation in the Medicaid program, and cannot suspend such obligations by failing to enact a timely state budget for fiscal year beginning July 1, 2005.**

Minnesota participates in the federal Medicaid program via the Medical Assistance program enacted by Minn. Stat. ch. 256B. The federal Medicaid program is established under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. When states participate in the Medicaid program, they must comply with intricate federal statutory requirements. *Harris v. McCrae*, 448 U.S. 297, 301 (1980). *See also*, 42 U.S.C §§ 1396a, 1396c. Each participating state must annually submit a "State Plan," and any amendments thereto, to the federal Centers for Medicare and Medicaid Services ("CMS"). Once the Secretary of the United States Department of Health and Human Services approves the Medicaid State Plan, the participating state becomes eligible for Federal Financial Participation ("FFP"), 42 U.S.C. §§ 1396b and 1396d(b). Among other things, that State Plan, once approved, defines the parameters of services covered and benefits provided within each participating state.

The FFP contribution by the federal government, however, is *completely dependent* on the State of Minnesota actually spending its matching state share. For example, the federal government can, and does, recoup overpayments from participating states that fail to meet the criteria for matching funds. *See, e.g., Department of Social Serv. v. Bowen*, 804 F.2d 1035, 1041 (8th Cir. 1986); *Perales v. Heckler*, 762 F.2d 226, 227 (2d Cir. 1985). Every state, including Minnesota, must report its estimated expenditure annually, and its actual

expenditures quarterly.⁷ Approved State Plans cannot be unilaterally altered or suspended by participating states without providing proper and timely notice to CMS, in order to secure requisite federal approval. A unilateral suspension places Minnesota's continued receipt of FFP at risk, and places continued CMS approval in jeopardy.

No federal statute or regulation enables a state to suspend Medicaid payments and services unilaterally on the grounds of a state legislative impasse over appropriating a state budget. A shutdown of Minnesota's Medicaid services would violate federal law by jeopardizing access to care. Under 42 U.S.C. § 1396a(a)(30)(A), states must pay providers amounts that "are sufficient to enlist enough providers so that care and services are available . . ." to eligible Medicaid recipients. Known as the "equal access provision" this federal law is binding on states participating in the Medicaid program.

The Eighth Circuit judiciary has relied on 42 U.S.C. § 1396a(a)(30)(A) to enjoin states from implementing payment changes without first conducting analytical studies to gauge the impact any payment reductions would have on access to services by eligible Medicaid beneficiaries. *Pediatric Specialty Care, Inc. v. Ark. Dep't. of Human Services*, 293 F.3d 472 (8th Cir. 2002). The Eighth Circuit has further held that providers have enforceable rights under the equal access provision. *Ark. Med. Soc'y Inc. v. Reynolds*, 6 F.3d 412 (8th Cir.

⁷ Understandably, maintaining FFP is so valued in Minnesota that the Legislature has enacted laws which maintain a close nexus between the amounts appropriately expended by the state and the identification of overpayments that do not qualify for FFP. *See, e.g.*, Minn. Stat. §256B.0642 (avoiding reductions in FFP by approved reductions in rates to providers); Minn. Stat. §256B.0641, subd.1 (1) (relying on federal payment schedule for overpayments to trigger alleged overpayment recoveries). Minnesota also enacted a provider surcharge law under Minn. Stat. § 256.9657 which enabled the state to enhance FFP in accordance with federal regulations. 42 U.S.C. §1396b(w)(3)(D)(i),(ii).

1993); *see also*, *ARRM, et al v. Goodno, et al*, U.S.D.C. Minn. Civil No. 03-2438 (JRT/PLN) Mem. Op. and Order at 15, fn10 (J. Tunheim, Aug. 18, 2004) (settled) (citing with approval *Pediatric* and *Ark. Med*).

III. ARGUMENT

- a. **The Supremacy Clause of the United States Constitution requires the State of Minnesota to continue funding its Medicaid program despite the absence of a state budget for fiscal year beginning July 1, 2005, and this Court should therefore grant the Petitions of Governor Pawlenty and Attorney General Hatch for temporary funding.**

Under the Supremacy Clause of the United States Constitution, states may not enact laws that conflict with the substantive provisions of the governing federal Medicaid law. Once a state has voluntarily elected to participate in the Medicaid program, it must comply with all federal standards. *See, e.g., Harris v. McRae*, 448 U.S. 297, 301 (1980); *New Jersey Ass'n of Health Care Facilities, Inc. v. Gibbs*, 838 F.Supp. 881 (D.N.J. 1993). States must follow any regulations established by the Secretary to implement the Medicaid Program. *See, e.g., Armstrong, et al v. Palmer*, 879 F.2d 437 (8th Cir. 1989), *citing Schweiker v. Gray Panthers*, 453 U.S. 34, 37 (1981). The Minnesota Court of Appeals has characterized "federal [Medicaid] regulations" as "enjoying supremacy." *Care Providers of Minnesota, et. al. v. Gomez*, 545 N.W.2d 45, 47 (Minn. Ct. App. 1996).

The Minnesota legislature has expressly recognized the supremacy of federal law to sustain FFP:

Subd. 2. Federal requirements. If any provision of this section and sections 256B.421, 256B.431, 256B.432, 256B.433, 256B.47, 256B.48, 256B.50, and 256B.502, is determined by the United States government to be in conflict with existing or future requirements of the United States government with respect to

federal participation in medical assistance, the federal requirements shall prevail.

Minn. Stat. § 256B.41, subd. 2.

Congress may condition the receipt of federal funds on certain state actions. *King v. Smith*, 392 U.S. 309, 333 (1968). That is exactly what the Medicaid program does, and it has been characterized as "cooperative federalism," because the states are given latitude in designing their programs so long as they follow basic federal requirements. *Douglas v. Babcock*, 990 F.2d. 875, 878 (6th Cir. 1998). Conversely, the federal government will not compel a state to provide services that Congress itself is unwilling to fund. *Harris v. McRae*, 448 U.S. 297, 309 (1980).

By ordering funding to continue, this Court will assure that Minnesota's temporary state budget impasse will not prevent Minnesota from meeting its obligations under its approved Medicaid State Plan, and that will assure a continuity of uninterrupted care and services to those individuals who are designated eligible for Medical Assistance and deemed vulnerable and subject to protection by the Vulnerable Adults and Maltreatment of Minors Acts.

- b. If the State of Minnesota interrupts its services and payments under the Medical Assistance program, that interruption could subject the State to causes of action by affected individuals, providers and the federal government.**

The United States Supreme Court has held that the federal Medicaid program creates enforceable statutory rights which providers or beneficiaries may assert under 42 U.S.C. § 1983. *Wilder v. Virginia Hospital Ass'n*, 496 U.S. 498 (1990); *see also, Perry v. Sindermann*, 408 U.S. 593 (1972). Federal statute 42 U.S.C. § 1396a(a)(30)(A) mandates

that Medicaid beneficiaries have equal access to services accessible to private citizens. See, *Pediatric Specialty Services, supra*. Similarly, public assistance benefits cannot be terminated without affording the beneficiary due process of law. *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011 (1970). Providers and beneficiaries would not be the only entities aggrieved by non-payment. Since the right to collect and retain FFP only exists if a participating state expends the state funds in conformity with the approved State Plan, a state suspension of payments would undoubtedly capture CMS's interest.

Even when state law is silent, Minnesota Courts have fashioned appropriate relief to prevent Medical Assistance beneficiaries from being uprooted from their homes because of threatened non-payment. In *LeZalla v. State of Minnesota* and *State of Minnesota v. Harmony Nursing Homes*, 366 N.W. 2d 395 (Minn. Ct. App. 1985) rev. denied, the Court of Appeals recognized the rights of Medical Assistance residents and facilities to continue to receive public assistance benefits despite the facility's withdrawal from the Medicaid program. Over the objections of the Department of Public Welfare, the Court reasoned that the Medicaid laws must be "construed not only according to legislative intent but also according to the consequence of a particular action." *LeZalla*, 366 N.W. 2d at 401. Ceasing Medicaid payments to the withdrawing facility and uprooting residents from their homes meant "the very group that the statutes were designed to benefit would be endangered. Such a result would be absurd" *Id.* To avoid that risk, the Court ordered the Department of Human Services to continue to pay Medical Assistance revenue to a provider exercising its right to withdraw from the program. The Court issued that Order even though, at that time, no legislative appropriation earmarked continued payment to withdrawing providers.

- c. While continuing temporary funding is an absolute necessity, this Court's stop-gap relief is not a substitute for legislative finality.

As explained above, an order of this Court permitting temporary funding of core functions of the Executive Branch is necessary to prevent harm to vulnerable adult citizens and to maintain Minnesota's compliance with federal law. Yet, while such an order would "keep the lights on" for essential core services, only legislative enactment can improve Minnesota's Medical Assistance program.

The nursing home members of Care Providers and MHHA have not received a substantive rate payment increase for the past two years, and while maintaining the status quo is essential today, *amici* respectfully reminds all interested stakeholders that while today's stop-gap measure is essential, long term legislative improvement through amendments is imperative.

IV. CONCLUSION

The cessation of payments by the State in *LeZalla* affected only a few facilities and their Medical Assistance residents. Here, the matter under review by this Court will affect all Minnesota Medical Assistance beneficiaries and their chosen service providers. This Court should follow its own precedent and correctly define core or essential services to include payments necessary to fund the Medical Assistance program services obligated by the Supremacy Clause to the United States Constitution.

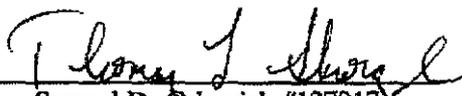
As in *LeZalla*, it would be absurd to endanger the very people benefitted by the Medical Assistance program and protected by Minnesota's Vulnerable Adults Act and

Maltreatment of Minors Act by refusing to confirm that the Executive Branch must maintain core or essential services obligated by government assistance programs.

For the foregoing reasons, Minnesota Health & Housing Alliance and Care Providers of Minnesota respectfully urge the Court to issue its order requiring temporary funding for all Medicaid services.

Dated: 6/21, 2005

ORBOVICH & GARTNER CHARTERED

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Attorneys for Care Providers of Minnesota
and Minnesota Health & Housing Alliance

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core
 Functions of the Executive Branch of
 the State of Minnesota

Court File No. C9-01-5725

**FINDINGS OF FACT, CONCLUSIONS OF
 LAW, AND ORDER GRANTING
 MOTION FOR TEMPORARY FUNDING**

On June 21, 2001, this Court issued an Order to Show Cause setting a hearing date of June 29, 2001 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2001. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. At the hearing on June 29, 2001 appearances were made by Attorney General Mike Hatch and Chief Deputy Attorney General Alan I. Gilbert on behalf of Petitioner. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.

2. The Minnesota Legislature ended its regular session this year on May 21, 2001 without approving appropriations for nearly all of the executive branch officers and agencies for

Amicus
Exhibit 1

the fiscal year beginning on July 1, 2001. On June 11, 2001 Governor Jesse Ventura convened the legislature in special session. The special session has not resulted in any appropriations for the executive branch officers and agencies.

3. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the six executive branch Constitutional Officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

4. The following Public Officials appointed by the Governor serve in a variety of capacities in the executive branch of government on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government:

- 1) David Fisher, Department of Administration,
- 2) Gene Hugoson, Department of Agriculture,
- 3) Christine Jax, Department of Children, Families and Learning,
- 4) James Bernstein, Department of Commerce,
- 5) Cheryl Ramstad Hvass, Department of Corrections,
- 6) Earl Wilson, Department of Economic Security,
- 7) Julien Carter, Department of Employee Relations,
- 8) Pamela Wheelock, Department of Finance,
- 9) Jan Malcolm, Department of Health
- 10) Jancen Rosas, Department of Human Rights,

- 11) Michael O'Keefe, Department of Human Services,
- 12) John Swift, Iron Range Resources and Rehabilitation Board,
- 13) Gretchen Maglich, Department of Labor and Industry,
- 14) Major General Eugene Andreotti, Department of Military Affairs,
- 15) Allen Garber, Department of Natural Resources,
- 16) Charles Weaver, Department of Public Safety,
- 17) Matthew Smith, Department of Revenue,
- 18) Rebecca Yannish, Department of Trade and Economic Development,
- 19) Elwyn Tinklenberg, Department of Transportation,
- 20) Jeffrey Olson, Department of Veterans Affairs,
- 21) Karen Studders, Minnesota Pollution Control Agency,
- 22) Dean Barkley, Department of Planning,
- 23) Morris Anderson, Chancellor, Minnesota State Colleges and Universities,
- 24) Howard Bicker, Executive Director, State Board of Investment,
- 25) Katherine G. Hadley, Housing Finance Agency,
- 26) Ted Mondale, Chair, Metropolitan Council,
- 27) Richard Scherman, State Board of Public Defense, and
- 28) David S. Paull, Board on Judicial Standards.

5. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of occupational and licensing boards, regulatory boards, mediation bureaus, minority affairs counsels, and other commissions which act on behalf of state government and perform core functions.

6. Local governmental units such as counties, municipalities and school districts are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the state to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid. School districts will be unable to carry out this core function without the State continuing to make timely payments to the school districts.

7. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2001, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

8. Examples of the federal programs referenced in paragraph 7 include the following welfare programs: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for

which they were eligible. See 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S.C. § 1396a(a)(10) and (9). The State must also share in the cost of operating each program. See 7 U.S.C. § 2025, 42 U.S.C. § 609(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. See 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c.

9. Due to the lack of legislative appropriations, the six Constitutional Officers of the State of Minnesota, the executive branch agencies, and the local units of Minnesota government, have insufficient funds to carry out all of their core functions as of July 1, 2001. Any failure to properly fund core functions of the executive branch would have severe consequences for the citizens of Minnesota.

10. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

11. Pursuant to the criteria referenced in paragraph 10 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;

- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

12. The State of Minnesota is not facing a budget crisis. The State has ample reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.
2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2000) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2000).
3. Article XI, Section 1 of the Minnesota Constitution provides that "no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate.
4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to

fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that "government is instituted for the security, benefit and protection of the people . . ." Article I, Section 1. Minnesota citizens are guaranteed under both the United States and Minnesota Constitutions the right to due process before deprivation of life, liberty or property. U.S. Const. Amendments III and IV; Minn. Const., Article I, Section 7. Minnesota citizens are guaranteed a wide range of rights under the Bill of Rights in both constitutions. U.S. Const. Amendments I-X; Minnesota Const. Article I. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2001.

7. The Minnesota Constitution requires that the State provide an adequate education through a "general and uniform system of public schools." Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, Aid to Families with Dependent Children and other similar welfare or social service programs, and the Section 8 housing program. Under these agreements continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. By way of example, core functions include, but are not limited to, the provision of healthcare to patients in state-run facilities and programs and the funding of patient care and services in local government or private facilities or programs, such as hospitals, nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services; the State's education system; the application and maintenance of federal and/or State contracted or mandated programs and projects, such as welfare, medical assistance, emergency and housing programs and construction projects; the preservation of safety in state-run facilities; enforcement of laws involving food, drugs, hazardous materials, safety in modes of transportation and state highways (such as the inspection of products and services provided pursuant to construction contracts), the proper provision of healthcare and the integrity of our judicial system; law enforcement, criminal investigations, and prosecutorial and public defender activities; emergency and disaster assistance; activities that ensure the continued production of power, maintenance of the power distribution system, and telecommunications systems; protecting the state and federal constitutional rights of Minnesota citizens; care of prisoners and others in the custody of the government; protection and maintenance of lands, buildings, waterways, transport property, equipment and other property owned or leased by the state government; activities essential to the preservation of the elements of the financial system of the State, including revenue collection, borrowing, payment of debts, compliance with bond and similar

requirements, maintenance of pensions, retirement programs and investment of state and retirement assets and prompt payment of amounts owed to employees, vendors, and contractors.

ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. The Minnesota Commissioner of Finance, Pamela Wheelock, and the Minnesota Treasurer, Carol Johnson, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.

3. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Commissioner of Finance and the State Treasurer, who shall pay for such services.

4. _____ is hereby appointed as a Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

5. This Order shall be effective until the earliest of the following:
- a. July 23, 2001;
 - b. The enactment of a budget by the State of Minnesota to fund the core functions of government after June 30, 2001; or

c. Further Order of this Court.

6. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

- a. The Honorable Jesse Ventura, Governor of the State of Minnesota,
- b. The Honorable Don Samuelson, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Pamela Wheelock, Commissioner of Finance,
- e. The Honorable Carol Johnson, Minnesota State Treasurer, and
- f. The Honorable Robert Small, Acting U.S. Attorney for the District of Minnesota.

7. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

BY THE COURT:

The Honorable Chief Judge Lawrence D. Cohen

Dated this _____ day of June, 2001.

AG: 488383, v. 01

6. That Hennepin County is in support of the relief requested by Petitioner and requests the Court grant said relief.

Further affiant sayeth not.



Commissioner Mark Stenglein

Subscribed and sworn to before me this 22nd day of June, 2005.



Notary Public



14

FILED
Court Administrator

JUN 23 2005

by *[Signature]* Deputy

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

Court File No. CO-05-5928

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
MOTION FOR TEMPORARY FUNDING**

On June 15, 2005, this Court issued an Order to Show Cause setting a hearing date of June 29, 2005 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2005. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. On June 15, 2005 Governor Tim Pawlenty filed a Motion to Intervene in the proceeding and requested that the hearing be held on June 23, 2005. The Petitioner agreed to move-up the hearing and so notified the 500 public officials as set forth in his Affidavit of Service. At the hearing on June 23, 2005, appearances were made by Attorney General Mike Hatch and by Eric Lipman, Esq., on behalf of Governor Pawlenty. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.

2. Governor Tim Pawlenty is the Governor of the State of Minnesota. The parties stipulate that Governor Pawlenty may intervene in this matter.

3. The Minnesota Legislature ended its regular session on May 23, 2005 without approving appropriations for many of the executive branch officers and agencies for the fiscal year beginning on July 1, 2005. Exhibit 1 to the Affidavit of Mike Hatch contains a list of those agencies that were not funded. On May 24, 2005, Governor Tim Pawlenty convened the legislature in special session. The special session has not resulted in any appropriations for the remaining executive branch officers and agencies.

4. The Minnesota Constitution entrusts certain core functions to the executive branch of government. Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

5. The following Public Officials serve in a variety of capacities in the executive branch of government on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government. The agencies headed by these Officials have not been funded by the legislature.

- 1) Gene Hugoson, Department of Agriculture,
- 2) Alice Seagren, Department of Education,
- 3) Glenn Wilson, Department of Commerce,
- 4) Matt Kramer, Department of Employment and Economic Development,

- 5) Dianne Mandernach, Department of Health,
- 6) Kevin Goodno, Department of Human Services,
- 7) Sandy Layman, Iron Range Resources and Rehabilitation Board,
- 8) Scott Brener, Department of Labor and Industry,
- 9) Gene Merriam, Department of Natural Resources,
- 10) Sheryl Corrigan, Minnesota Pollution Control Agency,
- 11) Tim Marx, Housing Finance Agency,
- 12) Michael Campion, Public Safety (partially funded),
- 13) Carol Molnau, Transportation, and
- 14) Peter Bell, Metropolitan Council.

6. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of boards, commissions and the like which act on behalf of state government and perform core functions, and which have not yet been funded.

7. Local governmental units such as counties, municipalities and school districts are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the state to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid. School districts will be unable to carry out this core function without the State continuing to make timely payments to the school districts.

8. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2005, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

9. Examples of the federal programs referenced in paragraph 7 include the following: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for which they were eligible. See 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S.C. § 1396a(a)(9) and (10). The State must also share in the cost of operating each program. See 7 U.S.C. § 2025, 42 U.S.C. § 609(a)(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. See 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c. The Department of Human Services is responsible under state law for administering the state programs relating to each of these three

federal programs. See Minn. Stat. §§ 245.771 (Food Stamp Program); 256J.02 (TANF Program); and 256.01, subd. 2 (Medicaid Program) (2004).

10. Due to the lack of legislative appropriations, many of the executive branch agencies and the local units of Minnesota government have insufficient funds to carry out all of their core functions as of July 1, 2005. Any failure to properly fund core functions of the executive branch may violate the constitutional rights of the citizens of Minnesota.

11. In 2001 Attorney General Mike Hatch petitioned this Court to act to preserve the operation of core functions of the executive branch of government after the Minnesota Legislature had failed to pass a budget funding state government. At that time this Court issued an Order directing that state and local agencies continue to perform the core functions required by the Minnesota and United States Constitutions and by federal law, and that the State continue to pay for such functions performed after July 1, 2001. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001) (attached to Petitioner's Memorandum in Support of Motion for Relief in this matter). In that Order the Court directed state and local agencies to determine what core functions were required to be performed by each. State executive branch agencies made such determinations, and the list of "critical" operations, listed by agency, which were to remain open in the event of a state government shutdown as of July 1, 2001, is contained in Exhibit 2 to the Affidavit of Mike Hatch submitted in support of this Petition.

12. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

13. Pursuant to the criteria referenced in paragraph 11 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

14. The Petitioner, Mike Hatch, has indicated that the State has ample financial reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.
2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2004) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2004).
3. Article XI, Section 1 of the Minnesota Constitution provides that "no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Under

Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate.

4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that "government is instituted for the security, benefit and protection of the people . . ." Article I, Section 1. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2005.

7. The Minnesota Constitution requires that the State provide an adequate education through a "general and uniform system of public schools." Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, the Food Stamp Program, the Temporary Assistance to Needy Families Program, and the Medicaid Program. Under these agreements continued participation in those programs is required once a State has

agreed to participate. The Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. Core functions also include functions required to be performed by the State under a federal contract or federal law.

ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. Core functions shall include, but are not limited to, the services set forth in the Core and Critical Functions List attached as Exhibit B to this Order. This Order does not approve or disapprove of the numbers of employees needed to carry out the core functions which are set forth in the List. Rather, State agencies and officials are mandated to employ the number of employees necessary to carry-out the core functions in a timely manner.

3. The Minnesota Commissioner of Finance, Peggy Ingison, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.

4. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Special Master who shall determine whether the Commissioner of Finance should pay for such services.

5. The Honorable Edward Stringer is hereby appointed as Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

6. This Order shall be effective until the earliest of the following:

- a. July 23, 2005;
- b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2005; or
- c. Further Order of this Court.

7. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

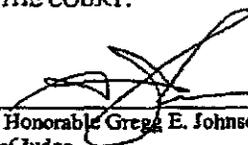
- a. The Honorable Tim Pawlenty, Governor of the State of Minnesota,
- b. The Honorable James Metzen, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Peggy Ingison, Commissioner of Finance, and

e. The Honorable Thomas Heffelfinger, U.S. Attorney for the District of Minnesota.

8. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

9. On Monday, July 11, 2005, at 9:30 a.m., the parties and Special Master will appear at a case management conference for the purpose of updating the Court as to the status of activities taken pursuant to this Order and the need for any further relief.

BY THE COURT:



The Honorable Gregg E. Johnson
Chief Judge
Ramsey County District Court

Dated this 23 day of
June, 2005.

AG: #1432476-v1

SERVICE LIST

THE HONORABLE JAMES METZEN
PRESIDENT OF THE SENATE
322 CAPITOL
75 REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155

THE HONORABLE STEVE SVIGGUM
SPEAKER OF THE HOUSE
463 STATE OFFICE BUILDING
100 REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155

THE HONORABLE TIM PAWLENTY
GOVERNOR
130 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155

THE HONORABLE MARY KIFFMEYER
SECRETARY OF STATE
180 STATE OFFICE BUILDING
100 REV. DR. MARTIN LUTHER KING JR. BLVD.
ST. PAUL, MN 55155

THE HONORABLE PEGGY INGISON
COMMISSIONER OF FINANCE
400 CENTENNIAL BUILDING
658 CEDAR STREET
ST. PAUL, MN 55155

THE HONORABLE PATRICIA ANDERSON
STATE AUDITOR
525 PARK STREET, SUITE 500
ST. PAUL, MN 55103

THE HONORABLE THOMAS HEFFELFINGER
UNITED STATES ATTORNEY
300 SOUTH 4TH STREET, ROOM 600
MINNEAPOLIS, MN 55415

Exhibit A

SERVICE LIST: STATE COMMISSIONERS

DANA BADGEROW
COMMISSIONER
DEPARTMENT OF ADMINISTRATION
200 ADMINISTRATION BUILDING
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

GLENN WILSON, JR.
COMMISSIONER
DEPARTMENT OF COMMERCE
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ST. PAUL, MN 55101

ALICE SEAGREN
COMMISSIONER
DEPARTMENT OF EDUCATION
1500 HIGHWAY 36 WEST
ROSEVILLE, MN 55113

MATT KRAMER
COMMISSIONER
DEPARTMENT OF EMPLOYMENT AND
ECONOMIC DEVELOPMENT
390 NORTH ROBERT STREET
ST. PAUL, MN 55101

DIANNE MANDERNACH
COMMISSIONER
DEPARTMENT OF HEALTH
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P.O. BOX 64882
ST. PAUL, MN 55164

KEVIN GOODNO
COMMISSIONER
DEPARTMENT OF HUMAN SERVICES
444 LAFAYETTE ROAD
ST. PAUL, MN 55155

SCOTT BRENER
COMMISSIONER
DEPARTMENT OF LABOR AND INDUSTRY
443 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155

GENE HUGOSON
COMMISSIONER
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ST. PAUL, MN 55107

JOAN FABIAN
COMMISSIONER
DEPARTMENT OF CORRECTIONS
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ST. PAUL, MN 55108

CAL LUDEMAN
COMMISSIONER
DEPARTMENT OF EMPLOYEE RELATIONS
CENTENNIAL OFFICE BUILDING, SUITE 200
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ST. PAUL, MN 55155

PEGGY INGISON
COMMISSIONER
DEPARTMENT OF FINANCE
400 CENTENNIAL BUILDING
658 CEDAR STREET
ST. PAUL, MN 55155

VELMA KORBEL
COMMISSIONER
DEPARTMENT OF HUMAN RIGHTS
ARMY CORP OF ENGINEERS CENTRE, SUITE 700
190 E. 5TH STREET
ST. PAUL, MN 55101

SANDY LAYMAN
COMMISSIONER
IRON RANGE RESOURCES
1006 HIGHWAY 53 SOUTH
P.O. BOX 441
EVELETH, MN 55734

JAMES CUNNINGHAM, JR.
COMMISSIONER
BUREAU OF MEDIATION SERVICES
1380 ENERGY LANE, SUITE TWO
ST. PAUL, MN 55108

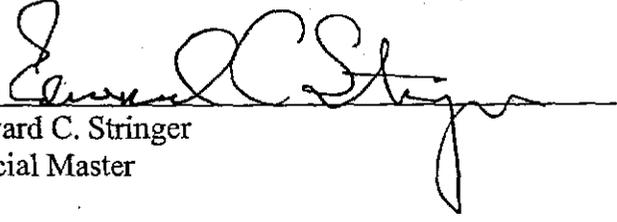
Concerns of Petitioner

1. Government shutdown would delay payments to medical assistance providers, causing hardship to consumers and providers.
2. Contracted services and grants would be suspended.
3. Government shutdown would prevent staff from processing electronic and paper claim submissions.
4. Mechanisms essential for efficient and timely reimbursement of costs to providers would be adversely affected by a government shutdown.

Analysis

1. Petitioner's concern regarding delayed payments is addressed in the Court's Order of June 23, 2005, paragraph 3, wherein the court directed timely issuance and processing of all checks necessary to pay for the core functions of government.
2. Petitioner's concern regarding contracts and grants is addressed by the Court's Order of June 23, 2005, paragraph 1, wherein all core functions are to be adequately funded for the executive branch to meet its obligations.
3. Petitioner's concern regarding processing of claim submissions is addressed by the Court's Order of June 23, 2005, paragraph 2, wherein all state agencies and officials are mandated to employ the number of employees necessary to carry out the core functions of government.
4. Petitioner's concern regarding efficient and timely reimbursement is addressed in the Court's order of June 23, 2005, paragraph 3, wherein the court directed timely issuance and processing of all checks necessary to pay for the core functions of government.

Dated: June 29, 2005

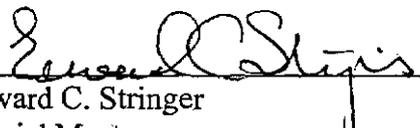

Edward C. Stringer
Special Master

Analysis

1. Petitioner's concern regarding funding is addressed in the Court's Order of June 23, 2005, paragraph 3, wherein the court directed timely issuance and processing of all checks necessary to pay for the core functions of government.

2. Petitioner's concern regarding grant managers is addressed by the Court's Order of June 23, 2005, paragraphs 1 and 2, wherein all core functions are to be adequately funded and staffed for the executive branch to meet its obligations. Peter Orput advised Petitioner that grant managers would be available during the budget crisis.

Dated: June 29, 2005



Edward C. Stringer
Special Master

17/3

FILED
Court Administrator

STATE OF MINNESOTA
COUNTY OF RAMSEY

JUN 30 2005

DISTRICT COURT
SECOND JUDICIAL DISTRICT

By J.H.A. Deputy

)	
	)	Case No. C0-05-5928
)	
	)	Petition No. 103
)	
In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota	)	RECOMMENDATIONS FOR PETITION OF MINNESOTA AIDS PROJECT
)	
)	
)	
)	
)	
)	
)	

This matter came before Special Master, the Honorable Edward C. Stringer on June 27, 2005 in State Capitol Room 224 at 12:00 p.m. Those present were Kristine Eiden, Chief Deputy Attorney General; Ken Peterson, Deputy Attorney General; Peter Orput, Director of Policy and Legal Services; Warren Ortland, Legal Research and Policy Coordinator for the Minnesota AIDS Project; Lorraine Teel, Executive Director of the Minnesota AIDS Project; and Summer Sharif of the Minnesota AIDS Project.

Based upon the testimony of Lorraine Teel, Executive Director of the Minnesota AIDS Project, the Special Master makes the following recommendations.

Recommendation

Petitioner's request for relief should be GRANTED.

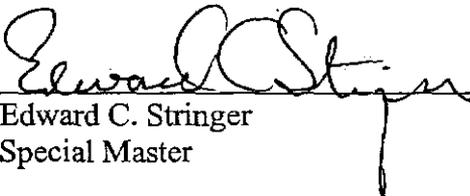
Concerns of Petitioner

1. Case management services, which support medication adherence, prevention of infection, and care to infected patients would not be funded.
2. Prevention programs and contracts would not be funded pursuant to the Court's June 23, 2005 Order.

Analysis

1. Case management services are related to the risk of new infections and care for those already infected. There is a greater need for providing services related to prevention during the peak season.
2. Petitioner's concern regarding prevention programs is addressed by Exhibit B to the Court's Order of June 23, 2005, wherein the DHS housing program and HIV/AIDS program are deemed core services. There appears to be no rationale for excluding case management services, prevention programs, and contracts.

Dated: June 29, 2005


Edward C. Stringer
Special Master

2. The majority of dislocated workers support families and suspension of services will impact every area of their lives.

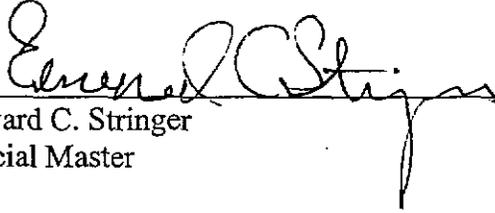
3. The Rapid Response Team, which works with employees and employers regarding large layoffs will be unavailable.

Analysis

1. First line of protection against risks involved with health and safety is unemployment insurance which is deemed a core function in Exhibit B of the Court's Order of June 23, 2005.

2. Remaining benefits of HIRED's programs relate to job searching, retraining, and return to work programs, and are generally secondary to unemployment insurance and do not directly involve a core function of government.

Dated: June 29, 2005


Edward C. Stringer
Special Master

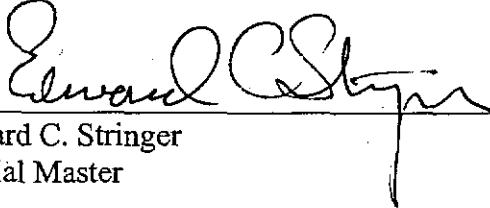
Concerns of Petitioner

1. Petitioners requested that the hearings remain open for further petitions requesting relief in this case.
2. Contracts should be suspended during the shutdown period and reactivated when the shutdown is over to avoid renegotiation. Payments on federal contracts should be made retroactively.
3. Which non-profits meet the test for core functions and whether there needs to be a contract-by-contract assessment as to whether a contract provides for a core function.

Analysis

1. Petitioners were notified that the process for submitting petitions and requesting hearings will remain open during the budget crisis.
2. Power and jurisdiction of the Court to suspend execution of contracts during the budget crisis or to order retroactive payments is doubtful at best. This was explained to Petitioners and it was suggested that they work their concerns out with the agencies providing services.
3. Regarding which non-profits meet the test, similar to above, it was recommended to Petitioner that they try to get a ruling from the department or agency providing service as to whether a contract falls within the definition of a core function.

Dated: June 29, 2005


Edward C. Stringer
Special Master

Concerns of Petitioner

1. Programs funded by Children's Trust Fund Grants will be discontinued during the period of government shutdown.
2. Block grants to counties would be discontinued and collaborative efforts and family preservation programs would not be funded.
3. Questions concerning whether counties will continue to honor contracts for payment of services rendered by Lutheran Social Services.

Analysis

1. Services provided as a result of funding by Children's Trust Fund Grants are related to the health and safety of participating children.
2. Programs funded by block grants to counties fall outside the definition of a core function as affecting health, safety, and protection of property or are matters that can be addressed effectively by the Department of Human Services as to what grants will be affected by the budget crisis.
3. Petitioner's expectations that counties will honor their contracts is a matter that Petitioner may discuss with each county to determine whether funds will be adequate during the budget crisis.

Dated: June 29, 2005



Edward C. Stringer
Special Master

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

State of Minnesota ex rel. Speaker of House
of Representatives Hon. Steve Sviggum,
Majority Leader Hon. Erik Paulsen, State
Representatives Hon. Paul Kohls,
Hon. Scott Newman, Hon. Mark
Buesgens, Hon. Tim Wilkin, Hon. Chris
DeLaForest, Hon. Duke Powell, Hon. Kurt
Zellers, Hon. Matt Dean, Hon. Jim Knoblach,
Hon. Jeff Johnson and Hon. Philip Krinkie,
and State Senators Hon. Tom Neuville,
Hon. Michele Bachmann, Hon. Sean Nienow,
Hon. David Hann, Hon. Warren Limmer,
Hon. Mady Reiter, and Hon. David Senjem,
in their capacity as State Legislators and individually,

Case No. _____

Petitioners,

vs.

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

Respondents.

**APPENDIX OF EXHIBITS FOR
PETITION FOR WRIT OF QUO WARRANTO**

VOLUME 2 OF 2

ATTORNEYS FOR PETITIONERS

MOHRMAN & KAARDAL, P.A.
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William F. Mohrman, Attorney #168816
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Minneapolis, MN 55402
Phone: 612-341-1074

APPENDIX INDEX

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2. Greater Minnesota Transit provides critical transportation to citizens living in municipalities in greater Minnesota.

Analysis

1. Petitioner's concern regarding Metro Transit is addressed by the Court's Order of June 23, 2005, paragraphs 1 and 2, wherein all core functions are to be adequately funded and staffed for the executive branch to meet its obligations. *See* Order of June 23, 2005, Exhibit B (deeming Metro Mobility as a core function and Metro Transit as a core function for one month only).

2. As the Court has deemed Metro Transit services a core function for one month only, there appears to be no rationale for excluding the services of Greater Minnesota Transit from the list of core functions. It is recommended that, as with Metro Transit services, Greater Minnesota Transit services be deemed a core function for one month only.

Dated: June 29, 2005



Edward C. Stringer
Special Master

Concerns of Petitioner

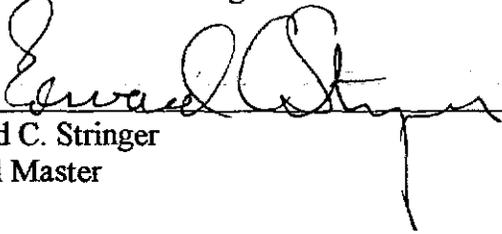
1. The budget crisis will prevent the State from meeting its contractual obligations regarding building inspections.
2. Building codes will not be enforced in a timely manner.

Analysis

1. Petitioner's concern regarding contractual obligations and building inspection is addressed by the Court's Order of June 23, 2005, paragraphs 1 and 2, wherein all core functions are to be adequately funded and staffed for the executive branch to meet its obligations. In addition the Court's Order of June 23, 2005 at Exhibit B deems electrical, plumbing, and building code inspections core functions.

2. Petitioner's concern regarding timeliness of building inspections is addressed by the Court's Order of June 23, 2005, paragraphs 1 and 2, wherein all core functions are to be adequately funded and staffed for the executive branch to meet its obligations.

Dated: June 29, 2005


Edward C. Stringer
Special Master

2. Refugee Employment Services will be unavailable during the budget crisis.

Analysis

1. Petitioner's mentoring program does not fall within the definition of a core function as it does not relate to health, safety, or protection of property of program participants.

2. Petitioner's Refugee Employment Program, as above, does not fall within the definition of a core function of government. Rather, this program is related to job seeking and employment matters.

Dated: June 29, 2005



Edward C. Stringer
Special Master

Minnesota Department of Human Services to Minnesota Health Care Programs Provider and Business Partner of June 16, 2005.

Petitioner's request for relief should be GRANTED.

Concerns of Petitioner

1. Whether durable medical equipment providers were core functions of government.
2. Timely payment of Petitioner's claims as submitted to the Department of Human Services.

Analysis

1. Providing life supporting services to children falls within the Court's definition of a core function of government as providing for health, safety, and protection of property. Petitioner provides life supporting care to children in their homes.
2. Petitioner's concern regarding payment of claims is addressed by the Court's Order of June 23, 2005, paragraphs 1 and 3, wherein all core functions are to be adequately funded and staffed for the executive branch to meet its obligations.

Dated: June 29, 2005


Edward C. Stringer
Special Master

Concerns of Petitioner

1. Twenty-five (25) state troopers will be furloughed should the budget crisis continue. All 25 are sworn officers and currently engage in non-patrol duties within the department.

Analysis

1. Petitioner's concern regarding these state troopers is addressed by the Court's Order of June 23, 2005, paragraphs 1 and 2, wherein all core functions are to be adequately funded and staffed for the executive branch to meet its obligations. *See* Order of June 23, 2005, Exhibit B (deeming all State Patrol road troopers and selected supervisors as core functions).

These 25 state troopers should be transferred to active patrol duties to the extent they are road ready.

Dated: June 29, 2005



Edward C. Stringer
Special Master

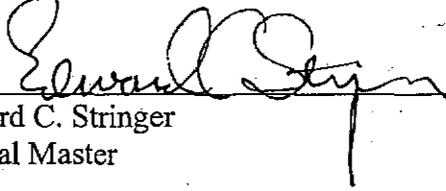
Concerns of Petitioner

1. Union shaft operators and electricians will be unable to properly maintain the equipment in the Soudan Underground Laboratory at the Soudan Underground Mine State Park.

Analysis

1. The Court should declare that continued access to, and the Department of Natural Resources's support of, the MINOS project in the University of Minnesota's Soudan Underground Laboratory, falls within the definition of a core function of state government as it relates to the protection of property against damage or loss.

Dated: June 29, 2005



Edward C. Stringer
Special Master

Executive Branch of the State of Minnesota as set forth in the Court's Order of June 23, 2005, paragraph 6.

2. It is recommended that payments for transportation contracts where the bids have been opened (and an apparent low-offeror identified) but the start date for performance occurs in July of 2005 shall be ordered to continue.

Dated: June 29, 2005

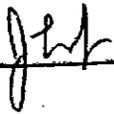


Edward C. Stringer
Special Master

FILED
Court Administrator

STATE OF MINNESOTA
COUNTY OF RAMSEY

JUN 30 2005

By  Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

Court File No. C0-05-5928

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

**ORDER GRANTING
MOTION FOR FUNDING
SUBJECT TO MODIFICATION**
(June 30, 2005 - II)

On June 23, 2005, Chief Judge Gregg E. Johnson heard oral argument upon the Motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, and the Motion to Intervene by Governor Tim Pawlenty and following said hearing, the court issued its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 23, 2005, the Court appointed Justice Edward C. Stringer as Special Master to mediate, hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On Monday, June 27, 2005 and Tuesday, June 28, 2005, Justice Stringer conducted hearings regarding Petitioners seeking state funding as providers of core services of government.

The Court accepts and adopts the findings of the Special Master subject to modification pursuant to Rule 53.05(b) with respect to the request(s) of government office(s) and petitions brought by programs (hereinafter listed):

1. Petition No. 101, Petition of Minnesota Association of Community Mental Health Programs, Inc. No action required.
2. Petition No. 102, Petition of Prevent Child Abuse Minnesota. No action required.
3. Petition No. 103, Petition of Minnesota AIDS Project. GRANTED.
4. Petition No. 104, Petition of Hired. DENIED.
5. Petition No. 105, Petition of Minnesota Council of Nonprofits. No action required.
6. Petition No. 106, Petition of Lutheran Social Services of Minnesota. GRANTED.
7. Petition No. 107, Petition of Joe Pazandak. No action required.
8. Petition No. 115, Petition of Pillsbury United Communities. DENIED in part. Special master will reconsider three programs on July 1, 2005.
9. Petition No. 116, Petition of Pediatric home Services. GRANTED.
10. Petition No. 117, Petition of Minnesota Law Enforcement. GRANTED.
11. Petition No. 119, Petition of Metro Transit. GRANTED.
12. Petition No. 120, Petition of Department of Natural Resources and University of Minnesota Regarding Minos Project. GRANTED.
13. Request of Governor's Office for Relief Relative to Statutory and Contractual Considerations. GRANTED.

ORDER

1. Petitions 101, 102, 105, 107 require no action.
2. Petitions 103, 106, 116, 117, 119, 120 are deemed core functions of government within the State of Minnesota and, therefore, are granted.

3. Petition 104 is denied and not deemed to be a core function of government within the State of Minnesota.

4. Petition 115 is denied in part. The Special Master will reconsider three programs on July 1, 2005.

5. Request of Governor's office for relief relative to statutory and contractual considerations is granted.

BY THE COURT:


The Honorable Gregg E. Johnson
Chief Judge
Ramsey County District Court

Dated this 30th day of June, 2005.

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FILED
Court Administrator

STATE OF MINNESOTA

JUN 30 2005

DISTRICT COURT

COUNTY OF RAMSEY

By JH Deputy

SECOND JUDICIAL DISTRICT

Case Type: Civil

Court File No. C0-05-5928

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

**FINDINGS OF FACT
CONCLUSIONS OF LAW AND
ORDER FOR CLARIFICATION
OF THE JUNE 23, 2005 ORDER
(June 30, 2005 - IV)**

On June 29, 2005, a hearing was brought before Chief Judge Gregg E. Johnson pursuant to Rule 19.01, upon a request by the Attorney General for enforcement of the Court's Order of June 23, 2005. Further hearing, including oral argument and testimony, was conducted June 30, 2005.

At the hearing June 29, 2005, Kristine L. Eiden, Chief Deputy Attorney General, was present. Eric L. Lipman, Esq., Acting General Counsel to the Office of the Governor, was present. At the hearing June 30, 2005, Eric L. Lipman, Esq., Acting General Counsel, appeared as counsel on behalf of the Office of the Governor, requesting reconsideration of the Court's Order of June 23, 2005, and particularly enforcement of payments to recipients of Medical Assistance, General Assistance Medical Care and MinnesotaCare as a core function of government in the State of Minnesota. Michael Hatch, Attorney General, Kristine L. Eiden, Chief Deputy Attorney General, and Kenneth Peterson, First Deputy Attorney General, appeared in support of the enforcement of the Court's Order of June 23, 2005, and particularly, for continuing payments to recipients of

Medical Assistance, General Assistance Medical Care and MinnesotaCare as a core function of government in the State of Minnesota.

FINDINGS OF FACT

1. On June 15, 2005, the Department of Human Services sent notice to recipients of Medical Assistance, General Assistance Medical Care and MinnesotaCare that their medical care may be interrupted as a result of a government shutdown.
2. As a part of this Court's Order filed June 23, 2005, recipients of Medical Assistance, General Assistance Medical Care and MinnesotaCare would continue to receive assistance as a core function of government.
3. Despite the lack of a state budget agreement, the state of Minnesota continues to generate revenue.

CONCLUSIONS OF LAW

1. That the Order of June 23 directed that state agencies and officials, municipal entities and school districts shall continue to perform core functions of government as required by the State Constitution.
2. That the core functions of government include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. Core functions also include functions required to be performed by the state under a federal contract or federal law.
3. That the provision of health care for the state of Minnesota's most vulnerable citizens is a core function of government and must be funded.
4. That in the event of a government shutdown, the services of the Minnesota Department of Human Services and, specifically, Medical Assistance, General Assistance

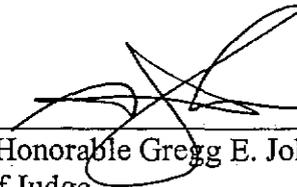
Medical Care and MinnesotaCare, are deemed to be a core function of government in the State of Minnesota.

5. That the Commissioner for the Minnesota Department of Human Services shall notice all recipients of Medical Assistance, General Assistance Medical Care and MinnesotaCare that, in the event of a government shutdown, payments to recipients will continue as a core function of government in the State of Minnesota.

ORDER

It is hereby ordered that all payments for Medical Assistance, General Assistance Medical Care and MinnesotaCare be funded as a core function of government.

BY THE COURT:



The Honorable Gregg E. Johnson
Chief Judge
Ramsey County District Court

Dated this 30th day of June, 2005.

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Court Administrator

STATE OF MINNESOTA

JUL 07 2005

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

SECOND JUDICIAL DISTRICT

Case No. C0-05-5928

Petition No. 112

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

**RECOMMENDATIONS FOR
PETITION OF GREATER TWIN
CITIES UNITED WAY**

This matter came before Special Master, the Honorable Edward C. Stringer on July 5, 2005 in State Capitol Room 224 at 9:00 a.m. Those present were Kristine Eiden, Chief Deputy Attorney General; Ken Peterson, Deputy Attorney General; Eric Lipman, Acting General Counsel for the Office of the Governor; Charles Johnson, Assistant Commissioner of the Department of Human Services; and Byron Laher, Director of Public Policy for the Greater Twin Cities United Way.

Based upon the testimony of Byron Laher, the Special Master makes the following recommendations.

Recommendation

No Action Required.

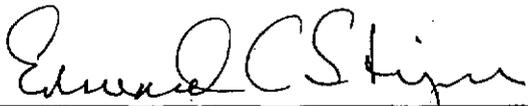
Concerns of Petitioner

1. The Court should construe the term "core function" broadly and consider the function, as well as the consequences of failing to fund certain functions, such as disqualification for state aid under Minnesota Family Investment Plan.
2. Construe the Court's order to require agencies to have sufficient staff to make payments on contracts unrelated to core functions.

Analysis

1. Charles Johnson will follow up with individual counties to ensure that disqualification for state aid does not occur because of the failure to fund certain programs during the government shutdown.
2. Petitioner's concern regarding staffing and payment on contracts unrelated to core functions is not within the jurisdiction of the Special Master. To the extent that contracts address core functions, Petitioner's concern is addressed by the Court's Order of June 23, 2005, paragraphs 1 and 2, wherein all core functions are to be adequately funded and staffed for the executive branch to meet its obligations.

Dated: July 7, 2005



Edward C. Stringer
Special Master

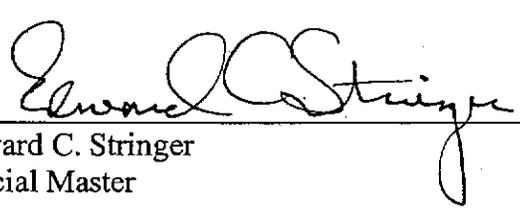
Concerns of Petitioner

1. The Network provides referrals to parents for child care services and assists child care providers to improve the quality of child care provided.
2. Contracts for federal funds would be adversely affected by a government shutdown and the shutdown may cause the Network to breach those contracts.

Analysis

1. Services provided by the Network are valuable and worthwhile, but do not directly affect health, safety, and the protection of public property and should not be deemed a core function under the definition provided in the Court's Conclusions of Law of June 23, 2005, ¶ 10. Other alternatives for locating childcare may be available to parents during the government shutdown.
2. Charles Johnson will follow up with Eric Lipman regarding the status of federal contracts and whether the Network will be in breach of these contracts.

Dated: July 6, 2005



Edward C. Stringer
Special Master

FILED
Court Administrator

JUL 07 2005

STATE OF MINNESOTA
COUNTY OF RAMSEY

By John Hausladen Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case No. C0-05-5928

Petition No. 125 (in part)

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

**RECOMMENDATIONS FOR
PETITION OF MINNESOTA
TRUCKING ASSOCIATION**

This matter came before Special Master, the Honorable Edward C. Stringer on July 5, 2005 in State Capitol Room 224 at 10:20 a.m. Those present were Kristine Eiden, Chief Deputy Attorney General; Ken Peterson, Deputy Attorney General; Eric Lipman, Acting General Counsel for the Office of the Governor; Cal Ludeman, Commissioner for the Minnesota Department of Employee Relations; John Hausladen, President of the Minnesota Trucking Association; and Peter Thrane, Counsel for The Minnesota Trucking Association.

Based upon the testimony of John Hausladen, the Special Master makes the following recommendations.

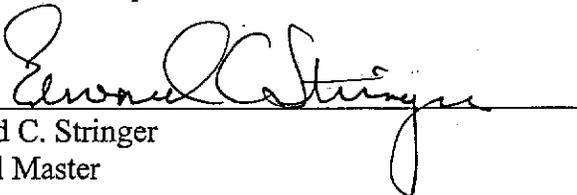
Concerns of Petitioner

1. If public rest stops remain closed during the budget crisis, truckers, who are subject to state and federal requirements of 10 hours of rest for every 14 hours worked, would not have a place to rest and would risk violating these regulations.

Analysis

1. While the Special Master is cognizant of Petitioner's concerns, rest areas do not fall within the scope of health, safety, and protection of public property, as other locations are available for resting so as to not violate state or federal rest requirements.

Dated: July 6, 2005


Edward C. Stringer
Special Master

2. The registration of vehicles and issuance of permits pursuant to the provisions of the International Fuel Tax Compact, as approved by Congress in the Intermodal Surface Transportation Efficiency Act (ISTEA), or the International Registration Plan shall continue as critical services of state government.

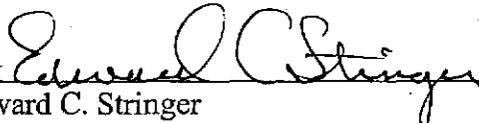
Dated: July 6, 2005



Edward C. Stringer
Special Master

Chapter 136 of the 2005 Laws of Minnesota, or the federal government, shall, notwithstanding the lack of an appropriation for the administrative functions of the Department of Public Safety, continue as critical services of state government. This recommendation includes all services for battered women funded through the Office of Justice Programs.

Dated: July 6, 2005



Edward C. Stringer
Special Master

Concerns of Petitioner

1. The Library and Training Program, providing information and education on health matters, would be discontinued for lack of funding.

2. Healing Journey Program, providing health care and services to chronic substance abusers would be discontinued and clients at high risk of going back to substance abuse and facing homelessness would be turned away.

3. Services provided under the Indian Child Welfare Program, mandated by federal law, would place more families at a higher risk for loss of custody, substance abuse, and mental illness.

4. Support services for sexually assaulted women through the Sexual Assault Advocacy Program would be unavailable, increasing the likelihood of re-victimization, substance abuse, and physical distress.

Analysis

1. The Library and Training Program is the often the only place where clients can and will go to find health related information and education for themselves and their families. This service should be deemed a core function pursuant to the Court's Conclusions of Law of June 23, 2005, ¶ 10 (defining core functions as relating to health, safety, and protection of public property).

2. The Healing Journey Program provides services that directly affect health and safety of MWIRC's clients. Specifically, the Program provides aid to clients with diabetes, heart disease, and chronic substance abuse. In addition, the Program provides access to safe housing and helps reduce the need for emergency room visits and detox visits. This service should be

deemed a core function pursuant to the Court's Conclusions of Law of June 23, 2005, ¶ 10 (defining core functions as relating to health, safety, and protection of public property).

3. The Department of Human Services may continue to disburse primary support and special focus grants in furtherance of activities and objectives under the Indian Child Welfare Act (25 U.S.C. § 1910 et. seq.), notwithstanding the lack of an appropriation, as a critical service of state government.

4. The Sexual Assault Advocacy Program provides services directly related to the health and safety of MIWRC's clients. This service should be deemed a core function pursuant to the Court's Conclusions of Law of June 23, 2005, ¶ 10 (defining core functions as relating to health, safety, and protection of public property).

Dated: July 6, 2005



Edward C. Stringer
Special Master

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Court Administrator

JUL 07 2005

STATE OF MINNESOTA
COUNTY OF RAMSEY

By JHL Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

)	
	)	Case No. C0-05-5928
)	
	)	Petitions No. 130 and 137
)	
In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota)	RECOMMENDATIONS FOR PETITIONS OF AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AND MINNESOTA ASSOCIATION OF PROFESSIONAL EMPLOYEES
)	
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This matter came before Special Master, the Honorable Edward C. Stringer on July 5, 2005 in State Capitol Room 224 at 12:00 p.m. Those present were Kristine Eiden, Chief Deputy Attorney General; Ken Peterson, Deputy Attorney General; Eric Lipman, Acting General Counsel for the Office of the Governor; Cal Ludeman, Commissioner for the Minnesota Department of Employee Relations; Eliot Seide, Executive Director of AFSCME Minnesota Council 5; Bob Hillaker of AFCSME; Bart Andersen of AFSCME; Mike Buseing of AFSCME; Barb Sasek of AFSCME; Deb Parkos of AFCSME; Bob Pinnow of AFSCME; Tudy Fowler, Department of Human Services, Labor Relations; James Monroe of MAPE; and Sheila Reger, Deputy Commissioner of the Department of Administration.

Based upon the testimony of Eliot Seide, Bob Hillaker, Bart Andersen, Mike Buseing, Barb Sasek, Deb Parkos, Bob Pinnow, and James Monroe, the Special Master makes the following recommendations.

Recommendation

Petitioners' request should be DENIED.

Concerns of Petitioner

1. All employee-members of AFSCME and MAPE should be considered critical employees during the government shutdown and return to work.
2. Petitioner MAPE is specifically concerned about the Inter-link program in the Department of Administration, claiming the use of a limited interruption is improper.

Analysis

1. While the Special Master is cognizant of Petitioners' concerns regarding any diminution of the employee service level that could lead to questions of safety, Petitioners present their claim on the second day of the government shutdown. It is too early to conclude that numbers of employees are insufficient. The Special Master's recommendation is made with deference to the numbers of employees needed as identified by each state agency. Without specific evidence of incorrectness, the Special Master will not intervene to change these numbers.

On the other hand, there appears to be tension between the Court's Order of June 23, 2005, ¶ 2, which requires each agency to employ that number of employees needed to carry-out the core functions in a timely manner.

Clearly the position of AFSCME and MAPE, that any cut in the number of employees is not tenable given the fact that many agencies have not been funded and that only core services can be provided by them. If it appears that an agency has been understaffed and core functions are not being provided in a manner consistent with the Court's Order of June 23, 2005, it is the

agency's responsibility to make a correction, and absent their doing so, it is assumed that the appropriate steps will be taken to enforce the Court's Order of June 23, 2005.

2. MAPE's concern regarding layoffs in the Department of Administration appears to be a routine personnel action, even if the action appears to have been taken in anticipation of a government shutdown.

Dated: June 6, 2005



Edward C. Stringer
Special Master

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Court Administrator

JUL 07 2005

STATE OF MINNESOTA
COUNTY OF RAMSEY

By JHL Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

Court File No. C0-05-5928

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

**ORDER GRANTING
MOTION FOR FUNDING
SUBJECT TO MODIFICATION**
(July 7, 2005 - V)

On June 23, 2005, Chief Judge Gregg E. Johnson heard oral argument upon the Motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, and the Motion to Intervene by Governor Tim Pawlenty and following said hearing, the court issued its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 23, 2005, the Court appointed Justice Edward C. Stringer as Special Master to mediate, hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On Tuesday, July 5, 2005, Justice Stringer conducted hearings regarding Petitioners seeking state funding as providers of core services of government.

The Court accepts and adopts the findings of the Special Master subject to modification pursuant to Rule 53.05(b) with respect to the request(s) of government office(s) and petitions brought by programs (hereinafter listed):

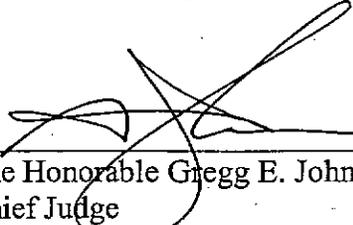
1. Petition No. 112, Petition of Greater Twin Cities United Way. No action required.

2. Petition No. 124, Petition of Minnesota Child Care Resource and Referral Network. DENIED.
3. Petition Nos. 125 in part and 132, Petition of Minnesota Trucking Association and Minnesota Manufactures Homes Association. GRANTED.
4. Petition No. 125 in part, Petition of Minnesota Trucking Association (Rest Areas). DENIED.
5. Petition No. 127, Petition of Minnesota Indian Women's Resource Center. GRANTED.
6. Petition Nos. 121, 122, 129, 134, 135, 136 and 138, Petitions regarding funds and grants administered by the Office of Justice Programs. GRANTED.
7. Petition Nos. 130 and 137, Petitions of American Federation of State, County and Municipal Employees and Minnesota Association of Professional Employees. DENIED.

ORDER

1. Petition 112 requires no action.
2. Petitions 121, 122, 125 in part, 127, 129, 132, 134, 135, 136, 138 are deemed core functions of government within the State of Minnesota and, therefore, are granted.
3. Petitions 124, 125 in part (Rest Areas), 130, 137 are denied and not deemed to be a core function of government within the State of Minnesota.

BY THE COURT:



The Honorable Gregg E. Johnson
Chief Judge
Ramsey County District Court

Dated this 7th day of July, 2005.

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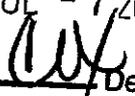
STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

FILED
Court Administrator

SECOND JUDICIAL DISTRICT

JUL - 7 2005
By  Deputy

Case Type: Civil

Court File No. C0-05-5928

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

**ORDER GRANTING
MOTION FOR FUNDING
SUBJECT TO MODIFICATION
(July 7, 2005 - VI)**

On June 23, 2005, Chief Judge Gregg E. Johnson heard oral argument upon the Motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, and the Motion to Intervene by Governor Tim Pawlenty and following said hearing, the court issued its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 23, 2005, the Court appointed Justice Edward C. Stringer as Special Master to mediate, hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On Wednesday, July 6, 2005 and Thursday July 7, 2005, Justice Stringer conducted hearings regarding Petitioners seeking state funding as providers of core services of government.

The Court accepts and adopts the findings of the Special Master subject to modification pursuant to Rule 53.05(b) with respect to the request(s) of government office(s) and petitions brought by programs (hereinafter listed):

1. Petition No. 139, Petition of Minnesota Housing Partnership.
GRANTED.

2. Petition No. 145, Petition of Minnesota Council of Airports. GRANTED.
3. Petition No. 148, Petitions of Minnesota Nurses Association. DENIED.
4. Petition No. 149, Petition of White Earth Reservation. GRANTED.
5. Petition No. 152, Petition of Ramsey County Board of Commissioners. GRANTED.
6. Petition No. 153, Petition of Senator Wes Skoglund. GRANTED in part and DENIED in part.

ORDER

1. Petitions 139, 145, 149, 152 are deemed core functions of government within the State of Minnesota and, therefore, are granted.

2. Petition 148 is denied and not deemed to be a core function of government within the State of Minnesota.

3. Petition 153 is granted as to MN/DOT traffic cameras, variable message signs and Freeway Incident Response Safety Team (FIRST). Petition is denied as to issuance of licenses for driving and professional licenses.

BY THE COURT:



The Honorable Gregg E. Johnson
Chief Judge
Ramsey County District Court

Dated this 7th day of July, 2005.

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Court Administrator

STATE OF MINNESOTA

JUL - 7 2005

DISTRICT COURT

COUNTY OF RAMSEY

By WV Deputy

SECOND JUDICIAL DISTRICT

Case No. C0-05-5928

Petition No. 152

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

**RECOMMENDATIONS FOR
PETITION OF RAMSEY COUNTY
BOARD OF COMMISSIONERS**

This matter came before Special Master, the Honorable Edward C. Stringer on July 7, 2005 in State Capitol Room 224 at 9:20 a.m. Those present were Kristine Eiden, Chief Deputy Attorney General; Ken Peterson, Deputy Attorney General; Eric Lipman, Acting General Counsel for the Office of the Governor; Victoria Reinhardt, Chair, Ramsey County Board of Commissioners; Dave Twa, County Manager, Ramsey County; and Monty Martin, Director of Human Services, Ramsey County.

Based upon the testimony of Victoria Reinhardt, Dave Twa, and Monty Martin, the Special Master makes the following recommendations.

Recommendation

Petitioner's request should be GRANTED.

Concerns of Petitioner

1. Petitioners are concerned that payments on grants will not occur during the government shutdown. Specifically, that the grant money or reimbursement will not be paid in a timely manner and the county will be forced to shutdown services. Approximately 75 to 85% of work done by Ramsey County related to human services is funded by the state through the following grants:

(a) Children and Community Services Act (CCSA) Block Grant. Issued by the Department of Human Services.

(b) Childcare funding through the following programs with reimbursement coming from the Department of Human Services:

(i) Minnesota Family Investment Program Child Care

(ii) Minnesota Family Investment Transition Year Extension

(iii) Basic Sliding Fee Child Care

(iv) Basic Sliding Fee Child Care – Portability Pool

(v) Basic Sliding Fee Child Care – At-Home Infant Care

(c) Local Public Health Grant. Issued by the Minnesota Department of Health. The Local Public Health Grant supports maternal and child health services, home visiting, epidemiology, immunizations, STD/HIV, tuberculosis control, childhood lead poisoning prevention, other local public health functions, and administrative services.

Analysis

1. Each of these programs provides services that directly affect health and safety of Ramsey County residents. As such, these services and grants should be deemed core functions pursuant to the Court's Findings of Fact of June 23, 2005, ¶ 10 (health, safety, and the protection

of public property) and enforced pursuant to the Court's Order of June 23, 2005, ¶¶ 1-3 (directing timely payment for all services and the employment of necessary personnel to complete such payments). Furthermore, Exhibit B to the Court's Order of June 23, 2005 explicitly deems Community Action and Community Services Block Grants as core functions. Payments or reimbursements under these grants and programs are time sensitive and to the extent that it is possible, should be made in the usual and customary manner, as if the government shutdown had no effect on these payments and reimbursements. This recommendation shall apply to all counties in the State of Minnesota.

Dated: July 7, 2005



Edward C. Stringer
Special Master

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STATE OF MINNESOTA

FILED
Court Administrator

DISTRICT COURT

COUNTY OF RAMSEY

JUL - 7 2005

SECOND JUDICIAL DISTRICT

By CU Deputy

Case No. C0-05-5928

Petition No. 153

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

**RECOMMENDATIONS FOR
PETITION OF SENATOR WES
SKOGLUND**

This matter came before Special Master, the Honorable Edward C. Stringer on July 7, 2005 in State Capitol Room 224 at 10:20 a.m. Those present were Kristine Eiden, Chief Deputy Attorney General; Ken Peterson, Deputy Attorney General; Eric Lipman, Acting General Counsel for the Office of the Governor; Senator Wes Skoglund; Nick Thompson, Minnesota Department of Transportation.

Based upon the testimony of Senator Skoglund, the Special Master makes the following recommendations.

Recommendation

Petitioner's request should be GRANTED in part and DENIED in part.

Concerns of Petitioner

1. Petitioner raises a concern regarding the safety of Minnesota highways. Specifically, Petitioner is concerned that not deeming and funding the Freeway Incident

Response Safety Team (FIRST), Minnesota Department of Transportation (MN/DOT) traffic cameras, and variable message signs will adversely affect the safety of Minnesota motorists and residents. In addition, Petitioner raises questions regarding Minnesota Constitution, Article XIV, which requires the state to perform functions related to the state highway system.

2. Petitioner is also concerned about the issuance of drivers licenses and professional licenses during the government shutdown. Specifically, Petitioner sees no distinction between residents seeking licenses for the first time and residents who merely need to renew licenses.

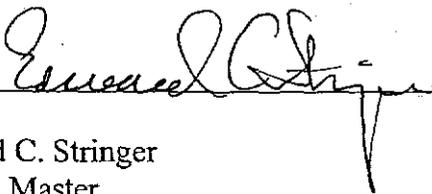
Analysis

1. Petitioner's concerns regarding FIRST, MN/DOT traffic cameras, and the variable message signs are related to the safety of Minnesota motorists. FIRST assists motorists in clearing out accidents and preventing further accidents on highways. MN/DOT traffic cameras allow county emergency dispatchers to dispatch emergency vehicles in a timely and efficient manner. Finally, variable message signs permit motorists to anticipate crashes and aid law enforcement agencies in disseminating information on Amber Alerts. Such functions should be deemed core functions pursuant to the Court's Findings of Fact of June 23, 2005, ¶ 10 and should be reinstated pursuant to the Court's Order of June 23, 2005, ¶¶ 1-3.

2. Issuance of drivers and professional licenses were matters considered by agencies preparing for the government shutdown. The Special Master's recommendation is made with deference to the decisions made by individual agencies in determining what licenses will be issued or renewed during the government shutdown. Furthermore, the Special Master finds that the agencies had a rational basis for distinguishing between residents that have licenses and have depended on them and residents who have yet to realize the benefits of licensure. For these

reasons, the Special Master recommends no changes to agencies' determinations of licensure during the government shutdown.

Dated: July 7, 2005



Edward C. Stringer
Special Master

Concerns of Petitioner

1. Petitioner provides support for individuals receiving inpatient psychiatric care. Through the Crisis Housing Program, Petitioner makes grants to these individuals, who in turn, use the grant money to pay rent, mortgages, or utilities while hospitalized. Funding for the Crisis Housing Program is discontinued because of the government shutdown.

Analysis

1. Petitioner's services prevent individuals from becoming homeless because they have missed payments while hospitalized. The Crisis Housing Program affects the health and safety of these individuals and should be deemed a core function of government pursuant to the Court's Findings of Fact of June 23, 2005, ¶ 10 and the Court's Order of June 23, 2005, ¶¶ 1, 2.

Dated: July 7, 2005


Edward C. Stringer
Special Master

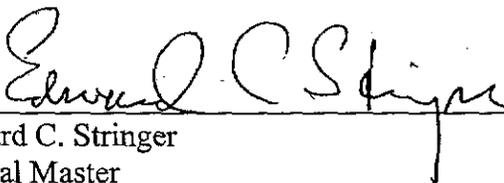
Concerns of Petitioner

1. As the fiscal agent for the Federal Aviation Administration, the Office of Aeronautics is obligated to process and distribute payments to cities that are currently doing construction work on their municipal airports. If such funds are not processed during the shutdown, unfinished construction will be a safety hazard to travelers. In addition, failure to make timely disbursements may disqualify municipalities from participating in future grant programs.

Analysis

1. The Court stated and the Parties agreed that road construction was to continue, and so to should airport construction. Personnel essential to the processing and payment of grant money in the Office of Aeronautics should be deemed critical under the Court's Order of June 23, 2005. Director Rought informed the Special Master that a minimum of four (4) personnel would be required: two (2) engineers, familiar with the ongoing projects to process payments; one (1) accounting employee; and one (1) employee authorized to disburse grant funds.

Dated: July 7, 2005


Edward C. Stringer
Special Master

Concerns of Petitioner

1. All employee-members of the Minnesota Nurses Association should be considered critical employees during the government shutdown and return to work.

Analysis

1. While the Special Master is cognizant of Petitioners' concerns regarding any diminution of the employee service level that could lead to questions of safety, it is too early to conclude that numbers of employees are insufficient. The Special Master's recommendation is made with deference to the numbers of employees needed as identified by the Department of Human Services and the Minnesota Department of Health. Without specific evidence of incorrectness, the Special Master will not intervene to change these numbers.

If it appears that an agency has been understaffed and core functions are not being provided in a manner consistent with the Court's Order of June 23, 2005, it is the agency's responsibility to make a correction, and absent their doing so, it is assumed that the appropriate steps will be taken to enforce the Court's Order of June 23, 2005.

Dated: July 7, 2005


Edward C. Stringer
Special Master

JUL - 7 2005
By UX Deputy

76

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

)	
	)	Case No. C0-05-5928
)	
	)	Petition No. 149
)	
In Re Temporary Funding of Core)	
Functions of the Executive Branch of	)	RECOMMENDATIONS FOR
the State of Minnesota	)	PETITION OF WHITE EARTH
	)	RESERVATION
)	
)	
)	
)	
)	

This matter came before Special Master, the Honorable Edward C. Stringer on July 6, 2005 in State Capitol Room 224 at 1:45 p.m. Those present were Kristine Eiden, Chief Deputy Attorney General; Ken Peterson, Deputy Attorney General; Eric Lipman, Acting General Counsel for the Office of the Governor; Terry Realt, Counsel for the White Earth Reservation; William Haas, Lobbyist for the White Earth Reservation; Charles LaDue, General Counsel for the White Earth Reservation; and Don Allen, Chemical and Mental Health Administration, Department of Human Services.

Based upon the testimony of Terry Realt and William Haas, the Special Master makes the following recommendations.

Recommendation

Petitioner's request should be GRANTED.

Concerns of Petitioner

1. Petitioners are concerned that funding for eleven (11) programs at the White Earth Reservation would be discontinued during the government shutdown and adversely affect the residents' health and safety. The eleven programs are as follows:

- (a) White Earth Mental Health Program
- (b) White Earth Chemical Dependency
- (c) White Earth Home Health and Public Health Nursing
- (d) White Earth Public Health Preparedness
- (e) White Earth Maternal Child Health
- (f) White Earth Employment Services
- (g) White Earth Healing Families Sexual Assault Program
- (h) White Earth General Crime Program
- (i) White Earth Indian Child Welfare
- (j) White Earth SELF Program
- (k) Elderly Nutrition Program

Analysis

1. Each of these programs provides services that directly affect health and safety of White Earth residents. These services should be deemed core functions pursuant to the Court's Conclusions of Law of June 23, 2005, ¶ 10 (defining core functions as relating to health, safety, and protection of public property). The Special Master's recommendation in this matter shall apply to any of the above listed programs that is not currently funded by an appropriation of the State Legislature.

Dated: July 7, 2005



Edward C. Stringer
Special Master

19
FILED

JUL 14 2005

STATE OF MINNESOTA COURT ADMINISTRATOR
COUNTY OF RAMSEY By Jg

DISTRICT COURT
SECOND JUDICIAL DISTRICT

(answer fee pd)

In re Temporary Funding of Core Functions
of the Executive Branch of the State of
Minnesota

Case Type : Civil
District Court File No. C0-05-5928

Attorney General Mike Hatch,
Petitioner,

Governor Tim Pawlenty,
Petitioner,

Ryan P. Winkler,
Applicant for
Intervention.

INTERVENER'S ANSWER

PARTIES

1. Intervener Ryan P. Winkler is a Minnesota resident and taxpayer. “[I]t is well settled that a taxpayer may, when the situation warrants, maintain an action to *restrain unlawful disbursements of public moneys*; to recover for the use of the public subdivision entitled thereto, money that has been illegally disbursed, as well as to *restrain illegal action on the part of public officials*.” *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977) (emphasis added; citation omitted). Taxpayer standing is particularly appropriate where, as here, two public officials have already appeared before the Court, requesting an order for unlawful, unconstitutional disbursements, and no party has intervened to oppose the action.

FIRST DEFENSE

Both Petitions have requested an order requiring the Commissioner of Finance to issue checks and process funds necessary to pay for “core functions” during a government shutdown. Such a remedy is contrary to Article III, Section 1, of the Minnesota Constitution, which provides that “the powers of government shall be divided into three distinct departments: legislative, executive and judicial,” and is contrary to Article XI, Section 1 of the Minnesota Constitution, which provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” Because the remedy is unconstitutional, it can not and should not be awarded by this Court. To the extent this Court has already issued such an order, and retains jurisdiction over the matter, the order should be vacated.

COUNTERCLAIM

1. With the Legislature and the Governor unable to agree on a budget, both the Attorney General and the Governor petitioned the Ramsey County District Court for an order requiring the Commissioner of Finance to issue checks and process funds necessary to pay for “core functions” during a government shutdown. Hatch Petition at 8 ¶ 2; Pawlenty Petition at 8 ¶ 21.

2. On June 23, 2005, the District Court issued its Findings of Fact, Conclusions of Law, and Order Granting Motion For Temporary Funding (hereinafter, “the Order”). The Order stated, among other things: “The Minnesota of Commissioner of Finance, Peggy Ingison, shall timely issue checks and process such funds as necessary to

pay for such obligations so that the core functions of government can be discharged.”

June 23, 2005 Order at 8 ¶ 3.

3. The remedy requested by the parties and awarded in the Order is contrary to Article III, Section 1, and Article XI, Section 1 of the Minnesota Constitution.

4. Article III, Section 1 of the Minnesota Constitution provides:

The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to our constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Minnesota courts have consistently upheld a strict separation of powers. *See Bloom v. American Exp. Co.*, 23 N.W.2d 570, 575 (Minn. 1946) (holding that a constitutional grant of power to one branch of government is a denial of such power to other departments, and declining to provide for a method for service of process beyond the method that the Legislature had statutorily prescribed); *Neighborhood School Coalition v. Independent School Dist. No. 279*, 484 N.W.2d 440, 441 (Minn. Ct. App. 1992) (holding that the principle of separation of powers forbids interference by one branch with another within their respective spheres of authority). There is no case supporting the proposition that the judicial branch may exercise the powers of the legislative branch in the manner undertaken in the Order.

5. Article III does provide that certain exceptions to a strict separation of powers may be provided for elsewhere in the Minnesota Constitution, but no such exception permits the Minnesota courts to directly appropriate public money to fund the functions of government. Indeed, the exceptions to the separation of powers principle

that are contained in the constitution¹ demonstrate that a high wall has been constructed between the three branches of government. This division of authority was adopted for a specific purpose:

The doctrine of separation of powers was adopted . . . not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

Myers v. United States, 272 U.S. 52, 293 (1926) (Brandeis, J., dissenting). Here, where the three branches of government appear to have agreed to disregard the separation of powers, it is the responsibility of citizens to insist on the “distribution of government powers.”

6. Article XI, Section 1 of the Minnesota Constitution provides:

No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

The Minnesota courts have consistently held that this provision requires that only the Minnesota Legislature may appropriate funds from the state treasury. *Beltrami County v. Marshall*, 135 N.W.2d 749, 753 (Minn. 1965) (“A legislative appropriation is always a prerequisite to state liability.”) (citing *State ex rel. Chase v. Preus*, 179 N.W. 725, 726 (Minn. 1920) (“The mere creation of the liability on the part of the state, or promise of the state to pay, . . . is of no force, in the absence of an appropriation of funds from which the liability may be discharged.”)); see also *Nelson v. Iverson*, 145 N.W. 607, 608 (Minn.

¹ For example, Article IV, Section 23 of the Minnesota Constitution grants the Governor authority to veto bills from the Legislature (a legislative function), Article VI, Section 2 grants the Minnesota Supreme Court administrative authority over the Minnesota courts (an executive function), and Article VIII, Section 3 grants the Minnesota Senate authority to sit as a court of impeachment (a judicial function).

1914) (“The purpose of the constitution in prohibiting the payment of money from the state treasury, except upon appropriation made by law, was intended to prevent the expenditure of the people’s money without their consent first had and given.”). The plain language of the constitution and every relevant decision of the Minnesota courts prohibit any branch of government but the Legislature from appropriating public funds.

7. Further, Article XI, Section 1 of the Minnesota Constitution mirrors Article I, Section 9, Clause 7 of the United States Constitution, which states that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” The United States Supreme Court has consistently held that only an act of Congress may authorize the payment of money out of the United States Treasury. *See Office of Pers. Mgmt v. Richmond*, 496 U.S. 414, 427-28 (1990); *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321 (1937); *Reeside v. Walker*, 52 U.S. 272, 291 (1850). Finally, the Kentucky Supreme Court has recently interpreted a virtually identical provision of the Kentucky Constitution² to prohibit the Governor of Kentucky from invoking his emergency powers to fund the core functions of government

² Section 27 of the Kentucky Constitution provides:

The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Section 28 of the Kentucky Constitution provides:

No person or collection of persons being one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

Section 230 of the Kentucky Constitution provides:

No money shall be drawn from the State Treasury, except in pursuance of appropriations made by law

absent a legislative appropriation. *See Fletcher v. Stumbo*, 2005 WL 1183241, 17 (Ky., May 19, 2005).

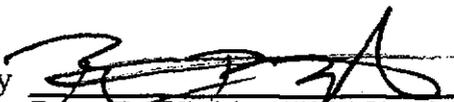
8. The Minnesota Constitution does not require that the Minnesota Legislature pass a budget bill for the “core functions of government,” and the Legislature has provided for no statutory alternative should it fail to do so. Indeed, bills that would appropriate limited funds for such core functions have been defeated by votes of the Legislature. *See, e.g.*, 2 Journal of the Senate 304-05, 519-20 (84th Minn. Leg. June 30, 2005) <available at <http://www.senate.leg.state.mn.us/journals/2005-2006/63005017.PDF>>. Since the Legislature took a vote and failed to pass such a provision, the legislative intent on the matter is settled, and the courts should defer to it. If the Order is not vacated, a precedent will have been established permitting interested parties to circumvent the Legislature by requesting that the courts appropriate additional funds at any time the “core functions of government” are insufficiently funded. Such a principle not only violates the form of the Constitution, it would fatally undermine the political process, by which the elected representatives of the people of Minnesota are to make decisions on the expenditure of public funds and be held accountable to voters for so doing.

9. Articles III and XI of the Minnesota Constitution are unambiguous, and vest the power to appropriate funds from the Minnesota treasury solely with the Minnesota Legislature. It is not the prerogative of any Minnesota court to appropriate money from the public treasury or amend the Minnesota Constitution, which is the unfortunate outcome of the Order.

Wherefore, Intervener demands that the Court adjudge:

1. That the relief awarded by the Court in page 8, paragraph 3 of the Order was unconstitutional;
2. That page 8, paragraph 3 of the Order should therefore be vacated; and
3. Granting all other relief as may be necessary and just.

Date: July 6, 2005

By 
Ryan P. Winkler (#0315874)
2908 Raleigh Avenue
St. Louis Park, Minnesota 55416
612-991-4498

Attorney, Pro Se

**STATE OF MINNESOTA
COUNTY OF RAMSEY**

**DISTRICT COURT
SECOND JUDICIAL DISTRICT**

In re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

Case Type : Civil
District Court File No. C0-05-5928

Attorney General Mike Hatch,

Petitioner,

Governor Tim Pawlenty,

Petitioner,

Ryan P. Winkler,

Applicant for
Intervention.

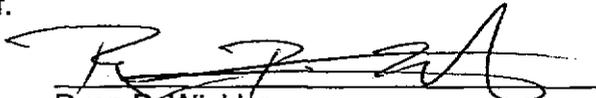
**AFFIDAVIT OF
SERVICE BY
HAND DELIVERY**

Ryan P. Winkler being first duly sworn upon oath, deposes and states that on the 7th day of July, 2005 he served the following:

1. Notice of Intervention and Motion to Intervene; and
2. Intervener's Answer;

upon **Minnesota Attorney General Mike Hatch** at the office of the Minnesota Attorney General, 1100 Bremer Tower, 445 Minnesota Street, County of Ramsey, State of Minnesota, City of St. Paul, 55101,

by handing to, and leaving true and correct copy(ies) thereof, with a clerk representing that she was authorized to accept service thereof.


Ryan P. Winkler

Subscribed and sworn to before me this
7th day of July, 2005.


Notary Public



STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

JUL 11 2005
By LB Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota

Court File No. C0-05-5928

**OBJECTION OF PETITIONER
ATTORNEY GENERAL MIKE
HATCH TO INTERVENTION**

On July 7, 2005, Attorney General Mike Hatch, Petitioner in this matter, was served with a Notice of Intervention and Intervenor's Answer by Ryan P. Winkler, attorney *pro se*. Mr. Winkler's Answer purports to assert a defense and a counter-claim in this matter. For relief, he requests in his Answer that the portion of this Court's Order directing the Minnesota Commissioner of Finance to pay for critical services be vacated.

Pursuant to Minn. R. Civ. P. 24.03, Petitioner Hatch objects to Mr. Winkler's requested intervention.

Dated: July 8, 2005

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota


KRISTINE L. EIDEN
Chief Deputy Attorney General
Atty. Reg. No. 19301

MARK B. LEVINGER
Assistant Attorney General
Attorney Reg. No. 62686

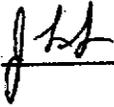
102 State Capitol
St. Paul, MN 55155-1002
(651) 296-2301 (Voice)
(651) 297-7206 (TTY)

ATTORNEYS FOR PETITIONER
MIKE HATCH

FILED
Court Administrator

STATE OF MINNESOTA
COUNTY OF RAMSEY

JUL 26 2005

By  Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

Court File No. C0-05-5928

In Re Temporary Funding of Core
Functions of the Executive Branch of
the State of Minnesota

ORDER

(July 25, 2005 – V)

On Monday, July 11, 2005, a status conference was held with respect to the above-entitled matter. Attorney General Mike Hatch was represented by Chief Deputy Kristine L. Eiden. The Governor's Office was represented by Acting General Counsel Eric Lipman. Mr. Lipman updated the court as to the status of budget negotiations among legislative leaders and the Governor. Mr. Lipman provided a copy of a bill passed by the legislature and signed by the Governor on Saturday, July 9, 2005, which appropriated funding for unfunded agencies to cover the period July 1, 2005 through July 14, 2005. Counsel for the Attorney General and the Governor agreed that, based on the progress in negotiations, proceedings before the Special Master undertaken pursuant to this Court's Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary funding on June 23, 2005 (the "Initial Order") be held in abeyance through July 13, 2005.

On July 13, 2005, various bills appropriating monies for agencies that were unfunded on June 30, 2005 were passed by the Minnesota Senate and the Minnesota House of Representatives. These measures were signed into law by Governor Tim Pawlenty on July 14, 2005.

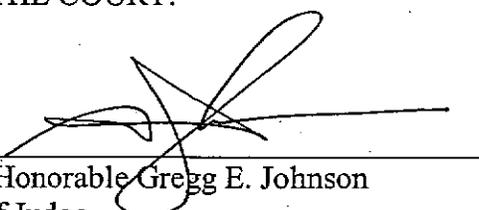
By its terms, the Initial Order was to remain in effect until the earliest of the following:

- a. July 23, 2005;
- b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2005; or
- c. Further order of this Court.

Based on the above, IT IS HEREBY ORDERED:

1. This Court's Order of June 23, 2005, shall no longer be in effect as of July 14, 2005.
2. The Executive Branch shall pay for core services that were previously ordered by this Court.
3. Staff from the Office of the Governor will present for approval and payment, according to the processes set out in *Minnesota Statutes Sec. 3.30*, the reasonable expenses of the Special Master, attached.
4. The Governor represents that neither he nor the Commissioner of Finance will withhold approval of the payment of reasonable fees and expenses submitted by the Special Master.
5. The Court shall retain jurisdiction over this matter until it has received written confirmation from the Office of the Governor that the Special Master's fees and expenses have been paid in full, or other further order of the Court.

BY THE COURT:



The Honorable Gregg E. Johnson
Chief Judge
Ramsey County District Court

Dated this 26th day of July, 2005.

In Account With

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION
 2200 FIRST NATIONAL BANK BUILDING
 SAINT PAUL, MINNESOTA 55101
 TELEPHONE (651) 808-6600

FILE NO.

36069.1
 Edward C. Stringer
 02271
 Invoice: 352425

July 20, 2005

State of Minnesota
 c/o Honorable Gregg Johnson
 Ramsey County District Court
 15 Kellogg Boulevard West Suite 600
 St Paul, MN 55102-1682

Terms: Payment Due
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For professional services rendered with regard to the following matter:

Matter of Temporary Funding of Core Functions of Executive Branch of State of Minnesota
 Appointment of Justice Edward Stringer, Special Master

<u>Date</u>	<u>Attorney</u>	<u>Hours</u>	<u>Description</u>
06/23/2005	Stringer, Edward C.	1.50	Telephone conference with Judge Johnson, Attorney General's Office; review petition for Order; memo, affidavits, funding schedule, 2001 Order, 2005 Order.
06/24/2005	Stringer, Edward C.	3.00	Conference with Dan Supalla, organize pleadings; meeting with attorneys for office of the Attorney General (K. Eiden), office of the Governor (E. Lipman), Judge Johnson regarding procedures, review petitions.
06/24/2005	Supalla, Daniel J.	4.50	Meeting with Justice Stringer, E. Lipman, K. Eiden regarding special master proceedings; research and prepare for meeting and hearings with same for Monday.
06/27/2005	Stringer, Edward C.	5.50	All day hearings; prepare recommendations.
06/27/2005	Supalla, Daniel J.	7.50	All day hearings; draft proposed recommendations.
06/28/2005	Stringer, Edward C.	5.50	All day hearings; report to Judge Johnson; prepare recommendations.
06/28/2005	Supalla, Daniel J.	8.25	All day hearings, drafting recommendations for

In Account With

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

2200 FIRST NATIONAL BANK BUILDING

SAINT PAUL, MINNESOTA 55101

TELEPHONE (651) 808-8600

FILE NO.

36069.1

Invoice: 352425

Matter of Temporary Funding of Core Functions of Executive Branch of State of Minnesota

July 20, 2005

Page 2

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<u>Date</u>	<u>Attorney</u>	<u>Hours</u>	<u>Description</u>
			Justice Stringer and Judge Johnson; pull cases cited in briefs.
06/29/2005	Supalla, Daniel J.	7.50	Meeting with E. Lipman and K. Eider; revising recommendations; meeting with Judge Johnson.
06/30/2005	Stringer, Edward C.	.60	Telephone conference with Judge Johnson regarding status; telephone conference with D. Supalla regarding new petitions, scheduling.
06/30/2005	Supalla, Daniel J.	4.25	Meeting with E. Lipman and K. Eiden; revising and preparing recommendations; phone conference with petitioners regarding special concerns.
07/01/2005	Stringer, Edward C.	1.50	Telephone conference with K. Eiden, D. Supalla regarding petitions, stipulation, conference with D. Supalla; telephone conference with Judge Johnson.
07/01/2005	Supalla, Daniel J.	2.75	Conference with E. Lipman and K. Eiden regarding stipulations for various petitions; telephone calls to four petitioners affected by stipulation.
07/05/2005	Stringer, Edward C.	7.00	Conference with K. Eiden, E. Lipman regarding stipulation, rescheduling; all day hearings; prepare recommendations.
07/05/2005	Supalla, Daniel J.	7.35	All day Hearings; conference with Justice Stringer regarding petitions and recommendations

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PROFESSIONAL ASSOCIATION
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SAINT PAUL, MINNESOTA 55101
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Matter of Temporary Funding of Core Functions of Executive Branch of State of Minnesota

July 20, 2005

Page 3

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<u>Date</u>	<u>Attorney</u>	<u>Hours</u>	<u>Description</u>
			for Justice Stringer; telephone calls to petitioners regarding stipulations; draft and revise recommendations; file recommendations.
07/06/2005	Stringer, Edward C.	4.00	Hearings; conference with K. Eiden and E. Lipman regarding recommendations; review Ramsey and Carver Counties' verifications; prepare and file recommendations.
07/06/2005	Supalla, Daniel J.	7.00	Hearings; conference with Justice Stringer regarding recommendations; draft and revise recommendations for 7/6/05 hearings; prepare for hearings of 7/7/05.
07/07/2005	Stringer, Edward C.	4.00	Hearings; conference with counsel, prepare recommendations; telephone conference with Judge Johnson.
07/07/2005	Supalla, Daniel J.	5.65	Hearings, conference with Justice Stringer regarding recommendations; draft and revise recommendations for 7/7/05 hearings; file recommendations.

Stringer
Supalla

32.60 @ \$325.00 = \$10,595.00

54.75 @ \$145.00 = 7,938.75

Professional Services

87.35 \$18,533.75

COSTS

Duplicating

19.44

In Account With

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION
2200 FIRST NATIONAL BANK BUILDING
SAINT PAUL, MINNESOTA 55101
TELEPHONE (651) 808-8600

FILE NO.

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Invoice: 352425

Matter of Temporary Funding of Core Functions of Executive Branch of State of Minnesota

July 20, 2005

Page 4

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Delivery	23.00
Fax	5.00
Westlaw	72.32

Total Costs Advanced \$ 119,76

Total Professional Services and Costs This Matter \$18,653.51

Total Due This Statement \$18,653.51

Please remit payment to:
BRIGGS AND MORGAN, P. A.
P.O. Box 64591
St. Paul, Minnesota 55164-0591

Legislative Appropriation Bills Passed 2005 Regular and Special Sessions

REGULAR SESSION – 2005

- H.F. No. 57** Deficiency funding provided for special state agencies, and money appropriated.
House – Bill repassed as amended by Conference Committee - 2/10/05
Senate – Adopted Conference Committee Report; Repassed - 02/14/05
Governor Approved – 02/15/05
- H.F. No.3** Omnibus bonding bill providing capital improvements funding for various state departments and higher education institutions including the University of Minnesota ... issuing bonds and appropriating money
House – Bill repassed as amended by Conference Committee – 04/06/05
Senate – Adopted Conference Committee Report – passed - 04/11/05
Governor Approved – 04/11/05
- H.F. No.1385** Omnibus higher education funding bill ... and appropriating money
House – Bill passed as amended by Conference Committee – 05/20/05
Senate – Adopted Conference Committee report; passed – 5/20/05
Governor Approved – 05/26/05
- H.F. No.1** Omnibus public safety finance bill appropriating money for courts, Public Safety, and Corrections Department ...
House – Bill as amended by Conference Committee – 05/23/05
Senate – Passed – Adopted Conference Committee report – 05/23/05
Governor Approved – 06/02/05
- H.F. No.847** Game and fish regulations modified ... and money appropriated
House - Bill as amended by Conference Committee – 05/23/05

Senate – Passed – Adopted Conference Committee report – 05/23/05

Governor Approved – 06/03/05

H.F. 2498 Public finance and tax increment financing provisions modified, purchases authorized, international economic development zone provided, tax incentives established and money appropriated

House – Bill passed as amended by Senate – 05/23/05

Senate – Passed as amended – 05/23/05

Governor Approved – 06/02/05

H.F. No.2228 Revenue commissioner general powers recodified and clarified, criminal penalty recodified, and money appropriated

House – Bill passed as amended by Senate – 05/23/05

Senate – Passed as amended – 05/23/05

Governor Approved – 06/02/05

H.F. 1481 Omnibus state government finance bill providing for general legislative and administrative expenses, state and local government operations, and appropriating money

House – Bill passed as amended by Conference Committee – 05/23/05

Senate – Adopted Conference Committee report – passed – 05/23/05

Governor Approved – 06/03/05

H.F. 874 Electronic voting equipment required, state voting systems contract established, and money appropriated from the Help America Vote account

House – Bill passed as amended by Conference Committee – 05/23/05

Senate – Adopted Conference Committee report – passed – 05/23/05

Governor Approved – 06/03/05

SPECIAL SESSION – 2005

S.F. No. 69 Appropriating money for agricultural, environmental, natural resources, and economic development purposes

House – passed – 06/30/05

Senate – passed – 06/30/05

Governor Approved – 06/30/05

H.F. No. 111 Providing transitional funding for certain governmental functions under certain conditions [continuing appropriations]

House – passed as amended – 07/08/05

Senate – passed – 07/08/05

Governor Approved – 07/09/05

H.F. No. 141 Omnibus k-12 and early education childhood education appropriations bill

House – passed as amended – 07/13/05

Senate – passed – 07/13/05

Governor Approved – 07/14/05

H.F. No. 139 Omnibus health and human services bill providing policy and funding, establishing tobacco impact fee and appropriating money

House – passed as amended - 07/13/05

Senate – passed – 07/13/05

Governor Approved – 07/14/05

H.F. No. 138 Omnibus tax bill ... and appropriating money

House – passed – 07/13/05

Senate – passed – 07/13/05

Governor Approved – 07/13/05

H.F. No. 140 Omnibus transportation bill... and appropriating money¹

House – passed as amended – 07/13/05

Senate – passed – 07/13/05

Governor Approved – 07/14/05

H.F. No. 44 Retirement and pension provisions modified and money appropriated

House – passed as amended – 07/13/05

Senate – passed – 07/13/05

Governor Approved – 07/25/05

¹ This bill was originally passed by the House and the Senate on 05/19/05 but was vetoed by Governor Pawlenty.



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

August 24, 2005

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (651) 296-6196

Erick G. Kaardal
MOHRMAN & KAARDAL, P.A.
33 South Sixth Street, Suite 4100
Minneapolis, MN 55402

Re: Petition for Writ of Quo Warranto

Dear Mr. Kaardal:

I thank you for your letter dated August 23, 2005 on behalf of Speaker Steve Sviggum and various legislators (Exhibit 1). You request that this Office appoint you as special counsel to represent the House of Representatives in filing a Writ of Quo Warranto with the Minnesota Supreme Court. The facts and analysis of your request are set forth below.

FACTS

Attached to your letter is a draft Petition for Writ of Quo Warranto to the Minnesota Supreme Court which names Peggy Ingison, in her capacity as Commissioner of Finance, as a defendant (Exhibit 2). The Petition requests the Supreme Court to issue a Writ of Quo Warranto to Commissioner Ingison requiring her (1) to show by what constitutional authority she disbursed state funds after the end of the state fiscal year on June 30, 2005 without an appropriation by the legislature; (2) or in the absence of such showing, to require her to cease and desist any further disbursements of state funds without an appropriation by law.

The draft submission, while fashioned as a Petition for Writ of Quo Warranto, effectively challenges the Findings of Fact, Conclusions of Law, and Order issued by Chief Judge Gregg E. Johnson on June 23, 2005. The Order required that certain core functions of state government be performed and that Commissioner Ingison pay for those functions. Chief Judge Johnson named former Justice Edward Stringer as a Special Master to resolve issues arising under the court's order and to make recommendations to the court if there were any disputes as to whether a particular function was a core service of government and should therefore be funded. Pursuant to this authority, Justice Stringer held various hearings with interested parties and made recommendations to Chief Judge Johnson. On June 30, 2005 and July 7, 2005, Chief Judge Johnson issued orders affirming the recommendations of Justice Stringer as to payment of certain core functions of government.

Erick G. Kaardal
August 24, 2005
Page 2

Your Petition states that during the month of July, Commissioner Ingison disbursed state funds pursuant to the Ramsey County District Court Order. The petition contends that these disbursements were made without appropriation by law as required by Article XI of the Minnesota Constitution and are, therefore, unconstitutional.

You request that you be appointed special counsel to represent your clients because you believe the Office of the Attorney General has a conflict of interest since I initiated the Ramsey County District Court proceeding which, you contend, lead to the unauthorized spending by the Commissioner of Finance.

For the reasons set forth below, I cannot approve your request for such an appointment.

LAW AND ANALYSIS

Procedure Involving Writs of Quo Warranto

The nature of a writ of quo warranto is derived from the ancient common law writ which was used by the King to prevent a dispersal of the powers of government through lesser nobles, barons, or burroughs who lacked proper authority from the Crown. *See e.g. State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 536-37, 48 N.W.2d 855, 860 (1951). The title of the writ means literally by "what warrant" and required the person subjected to the writ to demonstrate by what authority he purported to exercise certain powers properly reserved to the sovereign.

Originally, a writ could only be issued upon the petition of the attorney general *ex officio*. *See e.g. Danielson*, 234 Minn. at 537, 48 N.W.2d 460; *State ex rel. Young v. Village of Kent*, 96 Minn. 255, 259, 104 N.W. 948, 949-50 (1905). As the law involving writs of quo warranto evolved, private persons were also permitted, at the discretion of the court, to file an information for a writ of quo warranto. *State ex rel. Simpson v. Dowlan*, 333 Minn. 536, 537, 24 N.W. 188, 189 (1885). While the consent of the attorney general was initially required in cases initiated by private persons, the Minnesota Supreme Court has held that a writ could be issued, in its discretion, even though the attorney general had not consented to the writ. *See Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992); *Town of Burnsville v. City of Bloomington*, 264 Minn. 133, 117 N.W.2d 746 (1962); *State ex rel. Town of Stuntz v. City of Chisholm*, 196 Minn. 285, 264 N.W. 798 (1936).

Consequently, private individuals and entities may seek a writ of quo warranto with or without the consent of the Attorney General. A writ, however, is not available to correct single or temporary acts of misconduct. *See State ex rel. Grozbach v. Common School Dist. No. 65*, 54 N.W.2d 130 (Minn. 1952). Rather, a writ is an available remedy only where there is a course of continuing misconduct. *See State ex rel. Harrier v. Village of Spring Lake Park*, 245 Minn. 302, 71 N.W.2d 812 (1952).

Erick G. Kaardal
August 24, 2005
Page 3

Accordingly, there does not appear to be any need for you to be appointed by this Office, or even to have the consent of this Office, to seek a writ of quo warranto.

Parties Represented

While you indicate that you represent the House of Representatives as well as certain individual legislators, I am aware of no resolution enacted by the House of Representatives authorizing this action. If there is such a resolution, please let me know.

Laches

I should note, however, that any attempt by the House to adopt such a resolution is not timely. While the Petition is crafted to name the Commissioner of Finance as the defendant, it essentially challenges Chief Judge Johnson's Court Order issued on June 23, 2005 which directed that core government services be provided and paid for during the period of a government shutdown. Speaker Sviggum and the House of Representatives, as well as almost 500 other government officials and entities, were served with notice of the hearing on the government shutdown prior to the hearing before Chief Judge Johnson. Our records show that on June 15, 2005, the Order to Show Cause seeking temporary funding of core functions was personally served on Representative Sviggum as Speaker of the House (Exhibit 3). I should also note that the cover letter I sent with the Order specifically advised Speaker Sviggum of the date of the hearing before Judge Johnson and that the motion filed by the Attorney General's Office would request that the Court order that the State of Minnesota continue to provide and pay for core government functions during the period of the shutdown. *Id.*¹ Speaker Sviggum did not appear at the hearing nor did he submit any objections to the motion filed by the Attorney General's Office. On June 23, 2005, Chief Judge issued his Findings of Fact, Conclusions of Law and Order and on June 27, 2005, a copy of the Order was personally served on Speaker Sviggum (Exhibit 5).

Speaker Sviggum and the House of Representatives had notice of the motion and the hearing before Judge Johnson. They did not, however, file an objection to the motion to continue core government services during the shutdown. If they believed that the provisions of the services were unconstitutional, they should have stated so at that time. Alternatively, they could have taken action to appeal Judge Johnson's Order. They did neither.

¹ The date of the hearing was subsequently changed, and Speaker Sviggum was so advised. (Exhibit 4).

Erick G. Kaardal
August 24, 2005
Page 4

Ratification

Perhaps most significant, appropriation bills eventually passed by the House of Representatives to end the government shutdown contained the following or similar language:

Appropriations in this act are effective retroactively from July 1, 2005, and supersede and replace funding authorized by order of the Ramsey County District Court in Case No. C9-05-5928, as well as by Laws 2005, First Special Session chapter 2, which provided temporary funding through July 14, 2005.

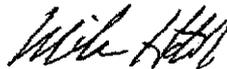
2005 1st Special Session, Chapter 2 (HF 111, SF 89). Since this language appropriates funding for services provided during the shutdown, Speaker Sviggum and the House of Representatives have no basis on which to now challenge the expenditures as not being duly appropriated.²

CONCLUSION

For the above reasons, I cannot approve of your appointment as counsel. I believe that any writ filed under these circumstances would be brought in bad faith and would expose the petitioner to liability for damages. Indeed, such a writ would be aggressively opposed by this Office.

If your individual clients continue to wish to pursue a writ of quo warranto, they should evaluate whether they would have standing in a taxpayer suit.

Very truly yours,



MIKE HATCH
Attorney General
State of Minnesota

AG: #1472618-v1/MAH/ab

² Your clients further have no basis to seek a writ of quo warranto since the action complained about -- the payment of funds during July, 2005 for services provided during the shutdown -- is no longer occurring. See *Grozbach*, 54 N.W.2d at 136.

Activity Summary

Last

62-C0-05-005928

Civil Other

Date filed: 06/15/2005

IN RE TEMPORARY FUNDING OF CORE FUNCTIONS OF THE EXECUTIVE
BRANCH OF THE STATE OF MINNESOTA [WHEELER]

Date	Activity	Start/End	Judge	CrtRm	Intrp	Chgs	Cont	Srvc	Date
10/26/05	Rvw Archve								
	MJ								WCJ
10/06/05	Motion Hrg	02:30-03:30	S Wheeler						
	MTN INTERVENE		ATTY RYAN WINKLER	612-991-4498					WCJ
=====Occurred Activities=====									
08/30/05	Schdl Hrg	08:24							
07/26/05	Clerical	12:18							
									WCJ
07/26/05	Order	10:34							
									JLS
07/26/05	Order	10:34							
07/26/05	Order	10:32							
07/19/05	Schdl Hrg	11:43							
07/19/05	Reassignmt	08:23	S Wheeler						
07/18/05	Unasagnmt	02:44	D Higgs						
07/18/05	Unasagnmt	01:02	G Johnson						
07/18/05	Reassignmt	01:02	D Higgs						
07/14/05	Answer Fld	09:41							
									LJG
07/14/05	Motion Fld	09:38							
									LJG
07/11/05	Doc. Filed	12:11							
07/08/05	Judge Assn	08:50	G Johnson						
07/07/05	Doc. Filed	04:24							
07/07/05	Doc. Filed	04:24							
07/07/05	Doc. Filed	04:20							
07/07/05	Doc. Filed	04:19							
07/07/05	Doc. Filed	04:19							
07/07/05	Doc. Filed	04:18							
07/07/05	Order	04:17							

>>>>ISSUANCE OF LICENSES FOR DRIVING/PROFESSIONAL LICENSES-
JDG. JOHNSON-COX

Minnesota Session Laws

Minnesota Session Laws - 2005

Key: ~~language to be deleted~~ new language Change language enhancement display

Legislative history and Authors

Posted Thu, Aug 4 2005

NOTE: This document DOES NOT represent a copy of the official publication of 2005 Session Laws. The final 2005 Session Laws will be available here in early October 2005.

CHAPTER 128-S.F.No. 2160

An act relating to claims against the state; providing for settlement of various claims; increasing amount of allowable reimbursement for certain damage by inmates; appropriating money; amending Minnesota Statutes 2004, section 3.755.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [DEPARTMENT OF CORRECTIONS.]

~~The following amounts are appropriated from the general fund to the commissioner of corrections in fiscal year 2006 as full and final payment of accrued medical bills under Minnesota Statutes, section 3.739, of claims against the state for injuries suffered by and medical services provided to persons injured while performing community service or sentence-to-service work for correctional purposes or while incarcerated in a correctional facility and for reimbursement to a corrections officer for property damaged by an inmate:~~

- ~~(1) for claims already paid by the department, \$4,938.44;~~
- ~~(2) for payment to James DeNoyer for permanent injuries suffered while performing work at MCF-Lino Lakes, \$8,000;~~
- ~~(3) for payment to Brian Dziubak for permanent injuries suffered while performing work at MCF-Stillwater, \$1,875;~~
- ~~(4) for payment of medical costs related to the injury suffered by Donna Gregory while performing sentence-to-service work in Martin County, \$3,509;~~
- ~~(5) for payment of medical costs related to the injury suffered by Brenden Larsen while performing sentence-to-service work in Dakota County, to the extent those costs are not reimbursed by insurance, \$7,083.29;~~
- ~~(6) for payment of medical costs related to the injury suffered by Diane Pierre while performing sentence-to-service work in Beltrami County, \$6,619.96;~~
- ~~(7) for payment to Stephen Schweiss for permanent injuries suffered while performing sentence-to-service work in Lyon County, \$3,750; and for payment of medical costs related to that injury, \$4,602.23;~~
- ~~(8) for payment of medical costs related to the injury suffered by Merlin Volker while performing community work service in Itasca County, \$4,343.10; and~~
- ~~(9) for payment to David Gustafson as reimbursement for property damaged by an inmate, \$421.21.~~

Sec. 2. Minnesota Statutes 2004, section 3.755, is amended to read:

3.755 [DAMAGE BY ESCAPING INMATES.]

The Department of Corrections and the Department of Human Services shall pay all claims involving property damage, not

covered by insurance, resulting from actions of escaping inmates or runaway patients occurring while making their escape. The departments must verify the reasonableness of the amounts claimed. Upon the approval of the commissioner of human services or the commissioner of corrections as to the institutions under their respective control, the superintendent or chief executive officer of an institution may pay out of the current expense appropriation of the institution to an employee of the institution the amount of any property damage sustained by the employee, not in excess of ~~\$250~~ \$500, because of action of a patient or inmate of the institution.

Presented to the governor May 31, 2005

Signed by the governor June 3, 2005, 11:15 a.m.

1 Senator moved to amend the Bakke amendment to S.F. No.
2 69 as follows:

3 Page 341, after line 14, insert:

4 "ARTICLE 6

5 TEMPORARY APPROPRIATION

6 Section 1. [TEMPORARY APPROPRIATION TO FUND CORE AND
7 ESSENTIAL SERVICES.]

8 Subdivision 1. [APPROPRIATION.] An amount necessary to
9 fund the core and essential services of state government and
10 employ the number of employees needed to carry out these
11 functions, for a period of 30 days from the date of enactment of
12 this act is appropriated from the general fund to the
13 commissioner of finance.

14 Subd. 2. [CORE AND ESSENTIAL SERVICES.] For purposes of
15 this section, "core and essential services" includes, but is not
16 limited to, those needed to preserve the life, health, and
17 safety of Minnesota citizens and the maintenance and
18 preservation of public property, and ensuring compliance with
19 state and federal constitutional rights of citizens and federal
20 mandates. Spending for such services may not exceed fiscal year
21 2005 spending levels.

22 Subd. 3. [INTENT.] The legislature intends that this
23 section be enacted into law to avoid a constitutional
24 confrontation between the legislative department of government
25 and the other two departments of government under article III of
26 the Minnesota Constitution, and to allow the legislature to
27 fulfill its constitutional obligation under article XI, section
28 1, of the Minnesota Constitution to see that no money is paid
29 out of the state treasury except pursuant to appropriation by
30 law. This section is further intended to nullify and void the
31 order of the Ramsey County District Court (file #C9-05-5928)
32 issued on June 23, 2005, and any action of the special
33 magistrate conducted pursuant to said order have no jurisdiction.

34 Subd. 4. [COURT JURISDICTION.] The courts of this state
35 may not order a variance to any of the provisions of this
36 section or the appropriations made pursuant thereto."

- 1 Amend the title accordingly
- 2 The motion prevailed. #did not prevail. So the amendment
- 3 was #not adopted.

MOHRMAN & KAARDAL, P.A.

ATTORNEYS AND COUNSELORS AT LAW

33 SOUTH SIXTH STREET
SUITE 4100
MINNEAPOLIS, MINNESOTA 55402

WILLIAM F. MOHRMAN
ERICK G. KAARDAL

CHARLES R. SHREFFLER
VINCENT J. FAHNLANDER

TELEPHONE: 612/341-1074
FACSIMILE: 612/341-1076
WRITER'S E-MAIL: KAARDAL@MKLAW.COM

August 23, 2005

Via Facsimile (651-282-5832)

Mr. Ken Kohnstamm
Managing Attorney
Civil Division
75 Rev. Dr. Martin Luther King, Jr. Blvd.
Saint Paul, MN 55155

RE: House of Representatives Petition for Writ of Quo Warranto

Dear Mr. Kohnstamm:

This letter is a request regarding appointment of me as a Special Counsel for a Petition for Writ of Quo Warranto to be filed in the Minnesota Supreme Court. *See Mattson v. Kiedrowski*, 391 N.W.2d 777 (1986) (petition for writ of quo warranto granted). The Petition would be brought on behalf of the State of Minnesota and the House of Representatives with the named relators being Speaker Steve Sviggum, Majority Leader Erik Paulsen, Paul Kohls, Scott Newman, Mark Buesgens, Tim Wilkin, Chris DeLaForest, Duke Powell, Kurt Zellers, Matt Dean, Jim Knoblach, Jeff Johnson and Philip Krinkie.

All of these named people are currently my clients in this matter and all correspondence regarding this matter should be directed through me.

I have enclosed a copy of a draft Petition for Writ of Quo Warranto to be filed with the Minnesota Supreme Court for you to review.

My clients believe that the Office of the Attorney General has a conflict of interest in representing them on the Petition for Writ of Quo Warranto because the Office of the Attorney General initiated the Ramsey County District Court proceeding – which led to the unauthorized spending by the Commissioner of Finance. Due to this conflict, it would be prudent for the Attorney General to appoint Special Counsel for the Petition for Writ of Quo Warranto.

By writing this letter, my clients are not waiving their right to separate counsel representing them in the Minnesota Supreme Court. But, rather, they are attempting to avoid unnecessary litigation

on the issue of representation of counsel when resources are better deployed on the substantive issues of law.

Please respond as soon as you are able.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Erick G. Kaardal', written in a cursive style.

Erick G. Kaardal

STATE OF MINNESOTA
IN SUPREME COURT

State of Minnesota ex rel. House of
Representatives, Speaker of House
of Representatives Hon. Steve Sviggum,
Majority Leader Hon. Erik Paulsen, State
Representatives Hon. Paul Kohls,
Hon. Scott Newman, Hon. Mark
Buesgens, Hon. Tim Wilkin, Hon. Chris
DeLaForest, Hon. Duke Powell, Hon. Kurt
Zellers, Hon. Matt Dean, Hon. Jim Knoblach,
Hon. Jeff Johnson and Hon. Philip Krinkie,

Case No. _____

Petitioners,

vs.

**PETITION FOR WRIT
OF QUO WARRANTO**

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

DRAFT

Respondent.

The above-named Petitioners respectfully petition the Supreme Court of the State of Minnesota to issue a writ of quo warranto to respondent Peggy Ingison, Commissioner of Finance, requiring her (1) to show by what constitutional authority she disbursed state funds after the end of the state fiscal year on June 30, 2005 without an appropriation by law; (2) or in absence of such showing, to require her to cease and desist any further disbursements of state funds without an appropriation by law.

JURISDICTION

1. The Minnesota Supreme Court has "original jurisdiction in such remedial cases as are prescribed by law." Minn. Const. art. VI, § 2. Section 480.04 provides:

The [supreme] court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, 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. It shall be always open for the issuance and return of such writs and processes and for the hearing and determination of all matters involved therein. . .

CONSTITUTIONAL PROVISIONS

2. Article IV of the Minnesota Constitution expressly allocates certain powers of government to the Legislative Department.

3. Article III prohibits the Executive Department and Judiciary from exercising the power of the Legislative Department without an express constitutional provision allowing it to do so:

DRAFT

ARTICLE III DISTRIBUTION OF THE POWERS OF GOVERNMENT

Section 1. DIVISION OF POWERS. The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

4. Article XI of the Minnesota Constitution provides that state funds may only be disbursed pursuant to an “appropriation by law”:

Section 1. Money paid from state treasury. No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

5. Article IV of the Minnesota Constitution provides a list of requirements for an “appropriation by law” to occur. Article IV’s requirements include the state legislature approving the appropriation bill, then presenting the appropriation bill to the

Governor who then signs it into law or vetoes the bill (including line item veto) and, if a veto occurs, the state legislature overriding the veto:

DRAFT

Sec. 23. APPROVAL OF BILLS BY GOVERNOR; ACTION ON VETO. Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. If, after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered in the journal of each house. Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill. At the time he signs the bill the governor shall append to it a statement of the items he vetoes and the vetoed items shall not take effect. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and the items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor.

Satisfying Article IV's requirements are a prerequisite for an "appropriation by law." An "appropriation by law" is an Article XI prerequisite to the spending of state funds.

FACTS

DRAFT

6. The state legislature, as an elected body, appropriates money for the funding of state agencies and programs on a biennial basis.
7. The fiscal year for the State of Minnesota is July 1 to June 30.
8. On May 23, 2005, the Minnesota legislature ended its regular session.
9. On May 24, 2005, Governor Tim Pawlenty convened the Minnesota legislature in special session.
10. On June 15, 2005, Mike Hatch, Attorney General for the State of Minnesota filed a petition and motion for an order to show cause with the Ramsey County District Court. The matter was entitled "In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota," Court File No. C0-05-5928.
11. A hearing on the matter was held on June 29, 2005 before Chief Judge Gregg E. Johnson and Findings of Fact, Conclusions of Law, and Order granting Attorney General Mike Hatch's petition.
12. The court ordered, among other things, that core functions of state government be performed, that each state agency, official, county and municipal entity, and school district determine those core functions and verify the performance of such to the Special Master.
13. The Special Master was to determine whether or not the Commissioner of Finance should pay for the performance of certain core functions.

14. The court further ordered the appointment of a Special Master (referee) to mediate, hear, and make recommendations to the Court with regard to any issues arising from the terms or compliance of the court's order.

15. From time to time thereafter, from about June 30, 2005 to July 7, 2005, various agencies, programs, and individuals, including individual legislators, filed petitions with the court and the Special Master made determinations as recommendations to the Ramsey County Chief Judge on what constituted core functions and therefore should be funded through the Commissioner of Finance.

16. On June 30, 2005 and July 7, 2005, Ramsey County Chief Judge Gregg E. Johnson issued orders affirming the recommendations of the Special Master.

17. The Respondent Commissioner of Finance issued checks from July __, 2005 through July __, 2005 disbursing state funds pursuant to the Ramsey County District Court Order – but without an “appropriation by law.”

18. On or about July __, 2005, the state legislature approved and presented to the Governor an appropriations bill which the Governor signed -- completing its biennial appropriations for the funding of all state agencies and programs.

CLAIM

DRAFT

19. The allegations of the foregoing paragraphs are incorporated in their entirety herein by reference.

20. Article III of the Minnesota Constitution provides for the separation of powers between the legislative, executive, and judicial branches of government with specific powers granted to each branch.

21. Article XI, Section 1 of the Minnesota Constitution is unambiguous, “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.”

22. Article IV of the Minnesota Constitution provides the legislature with exclusive authority to make “appropriations by law.”

23. The Respondent violated Article XI of the Constitution by disbursing money from the state treasury pursuant to Ramsey County District Court Order rather than an appropriation by law.

24. The Respondent acts unconstitutionally by paying money out of the treasury without an “appropriation by law” enacted pursuant to Article IV of the Minnesota Constitution.

DRAFT

CONCLUSION

Based on the foregoing, the above-named Petitioners respectfully petition the Supreme Court of the State of Minnesota to issue a writ of quo warranto to respondent Peggy Ingison, Commissioner of Finance, requiring her (1) to show by what constitutional authority she disbursed state funds after the end of the state fiscal year on June 30, 2005 without an appropriation by law; (2) or in absence of such showing, to require her to cease and desist any further disbursements of state funds without an appropriation by law.

Dated: _____, 2005

DRAFT

Erick G. Kaardal
Mohrman & Kaardal, P.A.
Suite 4100
33 South Sixth Street
Minneapolis, MN 55402
(612) 341-1074
(612) 341-1076 Facsimile

Attorneys for Petitioners

STATE OF MINNESOTA

IN SUPREME COURT

A05-1742

OFFICE OF
APPELLATE COURTS

SEP - 9 2005

FILED

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.

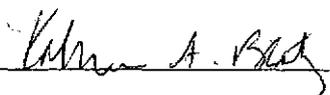
Because we conclude that petitioners have not demonstrated that “the most exigent of circumstances” exist to justify exercise of our original jurisdiction, the petition will be dismissed, without prejudice, so that petitioners can proceed in district court. We note that quo warranto is not an exclusive 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

Part One - Appropriations

**MN Department of Finance
 FY 2006 Court Ordered Operations
 Appropriation Amounts Established Under the Court-Ordered Legal Authority**

AGENCY / FUND	APPROPRIATION NAME	AMOUNT
Center for Arts Education GENERAL	PCAE GENERAL FUND	11,564
Dept of Education		
GENERAL	EDUCATION AGCY OPERATIONS	100,000
GENERAL	HEAD START	2,000,000
GENERAL	EDUCATION	300,000,000
GENERAL	EDUC AID	50,000
GENERAL	RESIDENTIAL MARKET VALUE	10,000
GENERAL	ARGICULTURE MARKET VALUE	5,000
Total Dept of Education		<u>302,165,000</u>
Minnesota State Academies GENERAL	MINNESOTA STATE ACADEMIES	101,278
Health Dept		
GENERAL	COMMUNITY & FAMILY HLTH PROMO	145,000
GENERAL	HEALTH PROTECTION	479,100
GENERAL	ADMINISTRATIVE SUPPORT SVCS	111,000
Total GENERAL		<u>735,100</u>
STATE GOVT SPECIAL REV	HEALTH PROTECTION	162,000
STATE GOVT SPECIAL REV	POLICY QUALITY & COMPLIANCE	199,700
Total STATE GOVT SPECIAL REV		<u>361,700</u>
Total Health Dept		<u>1,096,800</u>
Human Services Dept		
GENERAL	FINANCIAL OPERATIONS	583,938
GENERAL	FINANCIAL OPERATIONS	583,938
GENERAL	FINANCIAL OPERATIONS	593,000
GENERAL	MA BASIC HC GR-FAM & CHILD	119,500,000
GENERAL	AGING & ADULT SERVICES GR	1,044,000
GENERAL	DEAF AND HARD OF HEARING GR	8,000
GENERAL	DEAF AND HARD OF HEARING GR	40,000
GENERAL	OTHER CHILD & ECON ASSIST	638,000
GENERAL	MN FOOD ASSISTANCE PROG GRANTS	25,000
GENERAL	MINN SUPPLE ASSIST GR	2,500,000
GENERAL	GROUP RESID HOUSING GRANTS	5,700,000
GENERAL	MINN FAMILY INVEST PR	10,500,000
GENERAL	GENERAL ASSISTANCE GR	2,600,000
GENERAL	ALTERNATIVE CARE GRANTS	2,000,000
GENERAL	GAMC GRANTS	400,000
GENERAL	GAMC GRANTS	40,000,000
GENERAL	PRESCRIPTION DRUG - PROG	750,000
GENERAL	MFIP CHILD CARE ASSIST GRANTS	600,000

Part One - Appropriations

**MN Department of Finance
 FY 2006 Court Ordered Operations
 Appropriation Amounts Established Under the Court-Ordered Legal Authority**

AGENCY / FUND	APPROPRIATION NAME	AMOUNT
GENERAL	EARLY CHILDHOOD ED GRANT	100,000
GENERAL	BSF CHILD CARE ASST GRANTS	600,000
GENERAL	HC GRANTS-OTHER ASSIST	112,000
GENERAL	HC GRANTS-OTHER ASSIST	204,000
Total GENERAL		189,081,875
HEALTH CARE ACCESS	MNCARE GR - HCAF	150,000
HEALTH CARE ACCESS	MNCARE GR - HCAF	39,500,000
Total HEALTH CARE ACCESS		39,650,000
Total Human Services		228,731,875
Medical Practices Board		
STATE GOVT SPECIAL REV	MEDICAL PRACTICE OPERATIONS	56,000
Nursing Board		
STATE GOVT SPECIAL REV	NURSING OPERATIONS	59,000
Pharmacy Board		
STATE GOVT SPECIAL REV	PHARMACY OPERATIONS	59,000
Dentistry Board		
STATE GOVT SPECIAL REV	DENTISTRY OPERATIONS	31,000
Chiropractic Examiners Board		
STATE GOVT SPECIAL REV	CHIROPRACTOR LICENSING	10,000
Optometry Board		
STATE GOVT SPECIAL REV	OPTOMETRY LICENSING	5,000
Nursing Home Admin Board		
STATE GOVT SPECIAL REV	NURSING HOME ADMINISTRATION	10,000
STATE GOVT SPECIAL REV	NURSING HOME ADMINISTRATION	14,000
Total Nursing Home Admin Board		24,000
Social Work Board		
STATE GOVT SPECIAL REV	SOCIAL WORK OPERATIONS	12,000
Marriage & Family Therapy Board		
STATE GOVT SPECIAL REV	MARRIAGE & FAMILY THERAPY OPER	6,000
Podiatric Medicine Board		
STATE GOVT SPECIAL REV	PODIATRY LICENSING	4,000
Veterinary Medicine Board		
STATE GOVT SPECIAL REV	VETERINARY MEDICINE LICENSING	14,000

Part One - Appropriations

**MN Department of Finance
 FY 2006 Court Ordered Operations
 Appropriation Amounts Established Under the Court-Ordered Legal Authority**

AGENCY / FUND	APPROPRIATION NAME	AMOUNT
Emergency Medical Services Bd		
GENERAL	EMERGENCY MEDICAL SERVICES OPS	19,000
STATE GOVT SPECIAL REV	HEALTH PROFESSIONAL SERVICES	26,000
Total Emergency Medical Services Bd		<u>45,000</u>
Psychology Board		
STATE GOVT SPECIAL REV	PSYCHOLOGY LICENSING	21,000
Behavioral Health & Therapy Bd		
STATE GOVT SPECIAL REV	BEHAVIORIAL HLT & THERAPY OPER	11,000
STATE GOVT SPECIAL REV	ALCOLOH & DRUG CONSELORS OPS	6,000
Total Behavioral Health & Therapy Bd		<u>17,000</u>
Ombudsman MH/MR		
GENERAL	OMBUDSMAN FOR MH & MR	69,053
Public Safety Dept		
GENERAL	STATE PATROL- GENERAL FUND	167,000
GENERAL	SECURITY GOVERNOR'S RESIDENCE	15,000
Total GENERAL		<u>182,000</u>
TRUNK HIGHWAY	DPS ADMINISTRATION-THF	49,000
TRUNK HIGHWAY	OFFICE OF COMMUNICATIONS	8,000
TRUNK HIGHWAY	TECHNICAL SUPPORT SERVICES	23,000
TRUNK HIGHWAY	STATE PATROL- TRUNK HIGHWAY	3,790,000
TRUNK HIGHWAY	TROOPER CANDIDATE SCHOOL	27,000
TRUNK HIGHWAY	COMMERICAL VEHICLE ENFORCEMENT	488,000
TRUNK HIGHWAY	DRIVER VEHICLE SERVICES-THF	185,000
Total TRUNK HIGHWAY		<u>4,550,000</u>
HIGHWAY USERS TAX DISTRIBUTION DRIVER VEHICLE SERVICES-HUTD		41,000
Total Public Safety Dept		<u>4,773,000</u>
Transportation Dept		
GENERAL	GREATER MINNESOTA TRANSIT ASST	996,247
STATE AIRPORTS	AERONAUTICS OPERATION	49,865
TRUNK HIGHWAY	HIGHWAY IMPROVEMENT	28,012,536
TRUNK HIGHWAY	HIGHWAY IMPROVEMENT	35,000
TRUNK HIGHWAY	HIGHWAY IMPROVEMENT	214,457
TRUNK HIGHWAY	HIGHWAY IMPROVEMENT	83,000
TRUNK HIGHWAY	RAIL SERVICE PLAN & P	12,832
TRUNK HIGHWAY	ELECTRONIC COMMUNICAT	31,663
TRUNK HIGHWAY	COMMON CARRIER RATE R	29,663
TRUNK HIGHWAY	MAINTENANCE OPERATION	5,133

Part One - Appropriations

MN Department of Finance
 FY 2006 Court Ordered Operations
 Appropriation Amounts Established Under the Court-Ordered Legal Authority

AGENCY / FUND	APPROPRIATION NAME	AMOUNT
TRUNK HIGHWAY	TRAFFIC ENGINEERING	24,897
TRUNK HIGHWAY	800 MHZ SYSTEM	7,933
TRUNK HIGHWAY	METRO CONSTRUCTION	683,572
TRUNK HIGHWAY	DULUTH CONSTRUCTION	215,771
TRUNK HIGHWAY	BEMIDJI CONSTRUCTION	80,456
TRUNK HIGHWAY	BRAINERD CONSTRUCTION	226,569
TRUNK HIGHWAY	DETROIT LAKES CONSTRUCTION	82,989
TRUNK HIGHWAY	ROCHESTER CONSTRUCTION	153,445
TRUNK HIGHWAY	DISTRICT 7 CONSTRUCTION	142,315
TRUNK HIGHWAY	WILLMAR CONSTRUCTION	105,119
TRUNK HIGHWAY	METRO MAINTENANCE	208,989
TRUNK HIGHWAY	DISTRICT 1 MAINTENANCE	111,927
TRUNK HIGHWAY	BEMIDJI MAINTENANCE	55,927
TRUNK HIGHWAY	BRAINERD MAINTENANCE	34,730
TRUNK HIGHWAY	ST. CLOUD MAINTENANCE	46,197
TRUNK HIGHWAY	DISTRICT 4 MAINTENANCE	63,927
TRUNK HIGHWAY	ROCHESTER MAINTENANCE	87,927
TRUNK HIGHWAY	DISTRICT 7 MAINTENANCE	113,927
TRUNK HIGHWAY	WILLMAR MAINTENANCE	54,927
TRUNK HIGHWAY	ADMINISTRATIVE SERVICES	10,265
TRUNK HIGHWAY	HR AND WORKFORCE EQUITY	23,097
TRUNK HIGHWAY	FINANCIAL MANAGEMENT	12,832
TRUNK HIGHWAY	COMMISSIONERS OFFICE	10,265
TRUNK HIGHWAY	COMMUNICATIONS OFFICE	5,133
TRUNK HIGHWAY	PROGR MGMT DIV ADMIN	2,566
TRUNK HIGHWAY	TECHNICAL SUPPORT	23,097
TRUNK HIGHWAY	BRIDGES	34,264
TRUNK HIGHWAY	LAND MANAGEMENT	17,964
TRUNK HIGHWAY	MATERIALS ENGINEERING	97,388
TRUNK HIGHWAY	CONSTRUCTION&INNOVATIVCONTRACT	28,229
TRUNK HIGHWAY	ENVIRONMENTAL SERVICES	20,530
TRUNK HIGHWAY	EEO CONTRACT MGMT	7,699
TRUNK HIGHWAY	GOVERNMENT RELATIONS	2,566
TRUNK HIGHWAY	F & A ADMINISTRATION	2,566
TRUNK HIGHWAY	OPERATIONS SAFETY & TECHNOLOGY	5,133
TRUNK HIGHWAY	BRIDGES & STRUC - MAINT	18,264
TRUNK HIGHWAY	ENVIRONM SVCS-MAINT	5,133
TRUNK HIGHWAY	TECH SUPPORT - MAINT	2,566
TRUNK HIGHWAY	TRAFFIC ENGINEERING - MAINT	10,565
TRUNK HIGHWAY	OSTD-MAINTENANCE	20,530
Total	TRUNK HIGHWAY	31,266,280
Total Transportation Dept		32,312,392
	Grand Total	\$ 569,623,962

Part Two - Spending

MN Department of Finance
 FY 2006 Court-Ordered Appropriations
 Summary of Encumbrances, Salary and Non-Salary Expenditures for July 1, 2005 through July 8, 2005

AGENCY / FUND	APPROPRIATION NAME	ACTUAL PAYMENTS	ENCUMBERED OBLIGATIONS	ESTIMATED SALARIES	TOTAL	AGENCY TOTAL
Center for Arts Education GENERAL	PCAE GENERAL FUND		\$ 71	\$ 2,615	\$ 2,686	\$ 2,686
Dept of Education GENERAL GENERAL	EDUCATION AGCY OPERATIONS BOARD OF TEACHING			39,882 476	39,882 476	40,358
Minnesota State Academies GENERAL	MINNESOTA STATE ACADEMIES			23,824	23,824	23,824
Health Dept GENERAL GENERAL GENERAL GENERAL STATE GOVT SPECIAL REV STATE GOVT SPECIAL REV STATE GOVT SPECIAL REV	COMMUNITY & FAMILY HLTH PROMO HEALTH PROTECTION MINORITY & MULTICULTURAL HLTH ADMINISTRATIVE SUPPORT SVCS COMMUNITY & FAMILY HLTH PROMO POLICY QUALITY & COMPLIANCE HEALTH PROTECTION			1,950 35,527 6,493 6,712 7,112 16,223 24,927	1,950 35,527 6,493 6,712 7,112 16,223 24,927	98,944
Human Services Dept GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL GENERAL STATE GOVT SPECIAL REV HEALTH CARE ACCESS	DHS ADMIN OPERATIONS-GF DEAF AND HARD OF HEARING GR HC GRANTS-OTHER ASSIST OTHER CHILD & ECON ASSIST APPROPRIATED SERVICES STATE APPROP-AGCC STATE APPROP-ANOKA STATE APPROP-BRAINERD STATE APPROP-METO STATE APPROP-FERGUS FALLS STATE APPROP-FERGUS FALLS MENTAL HEALTH APPR SERV STATE APPROP-MOOSE LAKE MENTAL HEALTH APPR SRVC STATE APPROP-ST. PETER STATE APPROP-WILLMAR DHS ADMIN OPERATIONS - SGSR DHS ADMIN APPROPRIATIONS-HCAF		62,750 47,142 37,333 257,764 221,865 8,076 1,000 70,000 400 118,040 441,255 7,014	189,511 107,530 111,531 399,754 160,818 111,340 136,753 49,606 205,377 126,465 619,458 187,360 152 147,557	252,261 47,142 37,333 257,764 107,530 111,531 621,619 168,894 112,340 136,753 70,000 49,606 205,777 244,505 1,060,713 194,374 152 147,557	3,825,850
Medical Practice Board STATE GOVT SPECIAL REV	MEDICAL PRACTICE OPERATIONS			6,877	6,877	6,877
Nursing Board STATE GOVT SPECIAL REV	NURSING OPERATIONS			7,177	7,177	7,177

Part Two - Spending

**MN Department of Finance
 FY 2006 Court-Ordered Appropriations
 Summary of Encumbrances, Salary and Non-Salary Expenditures for July 1, 2005 through July 8, 2005**

AGENCY / FUND	APPROPRIATION NAME	ACTUAL PAYMENTS	ENCUMBERED OBLIGATIONS	ESTIMATED SALARIES	TOTAL	AGENCY TOTAL
Pharmacy Board						
STATE GOVT SPECIAL REV	PHARMACY OPERATIONS			8,666	8,666	
STATE GOVT SPECIAL REV	PHARMACY OPERATIONS			848	848	9,514
Dentistry Board						
STATE GOVT SPECIAL REV	DENTISTRY OPERATIONS			3,314	3,314	3,314
Chiropractic Examiners Board						
STATE GOVT SPECIAL REV	CHIROPRACTOR LICENSING			155	155	155
Optometry Board						
STATE GOVT SPECIAL REV	OPTOMETRY LICENSING			98	98	98
Nursing Home Admin Board						
STATE GOVT SPECIAL REV	ADMINISTRATIVE SERVICES UNIT			611	611	
STATE GOVT SPECIAL REV	ADMINISTRATIVE SERVICES UNIT			848	848	1,459
Social Work Board						
STATE GOVT SPECIAL REV	SOCIAL WORK OPERATIONS			1,461	1,461	1,461
Marriage & Family Therapy Board						
STATE GOVT SPECIAL REV	MARRIAGE & FAMILY THERAPY OPER			437	437	437
Podiatric Medicine Board						
STATE GOVT SPECIAL REV	PODIATRY LICENSING			127	127	127
Veterinary Medicine Board						
STATE GOVT SPECIAL REV	VETERINARY MEDICINE LICENSING			455	455	455
Emergency Medical Svcs Board						
GENERAL	HEALTH PROFESSIONAL SERVICES PR			874	874	
GENERAL	HEALTH PROFESSIONAL SERVICES PR			1,741	1,741	
STATE GOVT SPECIAL REV	HEALTH PROFESSIONAL SERVICES PR			3,900	3,900	6,514
Psychology Board						
STATE GOVT SPECIAL REV	PSYCHOLOGY LICENSING			2,391	2,391	2,391
Behavioral Health & Therapy Bd						
STATE GOVT SPECIAL REV	BEHAVIORIAL HLT & THERAPY OPER			897	897	
STATE GOVT SPECIAL REV	ALCOHOL & DRUG CONSELORS OPERA			897	897	1,794
Ombudsman MH/MR						
GENERAL	OMBUDSMAN FOR MH & MR		316	13,937	14,253	14,253

Part Two - Spending

MN Department of Finance
 FY 2006 Court-Ordered Appropriations
 Summary of Encumbrances, Salary and Non-Salary Expenditures for July 1, 2005 through July 8, 2005

AGENCY / FUND	APPROPRIATION NAME	ACTUAL PAYMENTS	ENCUMBERED OBLIGATIONS	ESTIMATED SALARIES	TOTAL	AGENCY TOTAL
Public Safety Dept						
GENERAL	CRIMINAL APPREHENSION-GF		332,487		332,487	
GENERAL	CRIMINAL JUSTICE DATA NETWORK		64,200		64,200	
GENERAL	DWI LAB ANALYSIS		494		494	
GENERAL	CRIMNET BACKBONE		20,149		20,149	
GENERAL	STATE PATROL- GENERAL FUND			29,134	29,134	
GENERAL	CAPITOL SECURITY CONTRACTS			13,051	13,051	
GENERAL	SECURITY GOVERNOR'S RESIDENCE			1,090	1,090	
GENERAL	DRIVER VEHICLE SERVICES-GF			1,121	1,121	
GENERAL	GAMBLING ENFORCEMENT		199		199	
TRUNK HIGHWAY	DPS ADMINISTRATION-THF			11,871	11,871	
TRUNK HIGHWAY	OFFICE OF COMMUNICATIONS			2,917	2,917	
TRUNK HIGHWAY	TECHNICAL SUPPORT SERVICES			5,895	5,895	
TRUNK HIGHWAY	STATE PATROL- TRUNK HIGHWAY			692,733	692,733	
TRUNK HIGHWAY	COMMERCIAL VEHICLE ENFORCEMENT			67,556	67,556	
TRUNK HIGHWAY	DRIVER VEHICLE SERVICES-THF			34,215	34,215	
TRUNK HIGHWAY	TRAFFIC SAFETY-THF			1,362	1,362	
HIGHWAY USERS TAX DISTR	DRIVER VEHICLE SERVICES-HUTD			9,741	9,741	1,288,216
Transportation Dept						
GENERAL	RAIL SERVICE PLAN & P			1,208	1,208	
GENERAL	GREATER MINNESOTA TRANSIT ASST	996,247			996,247	
STATE AIRPORTS	AERONAUTICS OPERATION			9,922	9,922	
TRUNK HIGHWAY	RAIL SERVICE PLAN & P			3,896	3,896	
TRUNK HIGHWAY	ELECTRONIC COMMUNICAT			9,769	9,769	
TRUNK HIGHWAY	TRANSIT PLANNING & EV			45	45	
TRUNK HIGHWAY	COMMON CARRIER RATE R			9,735	9,735	
TRUNK HIGHWAY	MAINTENANCE OPERATION			4,643	4,643	
TRUNK HIGHWAY	TRAFFIC ENGINEERING			7,157	7,157	
TRUNK HIGHWAY	DESIGN & CONSTRUCT ENGINEER			6,683	6,683	
TRUNK HIGHWAY	800 MHZ SYSTEM			3,624	3,624	
TRUNK HIGHWAY	COMMISSIONERS OFFICE			6,350	6,350	
TRUNK HIGHWAY	PAVEMENT STRIPING-2001			678	678	
TRUNK HIGHWAY	BUILDINGS			166	166	
TRUNK HIGHWAY	TRAFFIC ENGINEERING - MAINT			14,621	14,621	
TRUNK HIGHWAY	HIGHWAY IMPROVEMENT	0	28,294,152		28,294,152	
TRUNK HIGHWAY	GOVERNMENT RELATIONS			2,085	2,085	
TRUNK HIGHWAY	COMMUNICATIONS OFFICE			2,856	2,856	
TRUNK HIGHWAY	EEO CONTRACT MGMT			3,956	3,956	
TRUNK HIGHWAY	HR AND WORKFORCE EQUITY			20,206	20,206	
TRUNK HIGHWAY	F & A ADMINISTRATION			2,028	2,028	
TRUNK HIGHWAY	FINANCIAL MANAGEMENT			5,224	5,224	
TRUNK HIGHWAY	ADMINISTRATIVE SERVICES			2,073	2,073	
TRUNK HIGHWAY	PROGR MGMT DIV ADMIN			3,214	3,214	
TRUNK HIGHWAY	ENGINEERING SERVICES			463	463	
TRUNK HIGHWAY	INFORMATION TECHNOLOGY			36,918	36,918	

Part Two - Spending

MN Department of Finance
 FY 2006 Court-Ordered Appropriations
 Summary of Encumbrances, Salary and Non-Salary Expenditures for July 1, 2005 through July 8, 2005

AGENCY / FUND	APPROPRIATION NAME	ACTUAL PAYMENTS	ENCUMBERED OBLIGATIONS	ESTIMATED SALARIES	TOTAL	AGENCY TOTAL
TRUNK HIGHWAY	OPERATIONS SAFETY & TECHNOLOGY			3,967	3,967	
TRUNK HIGHWAY	BRIDGES			18,800	18,800	
TRUNK HIGHWAY	BRIDGES & STRUC - MAINT			3,275	3,275	
TRUNK HIGHWAY	ENVIRONMENTAL SERVICES			12,921	12,921	
TRUNK HIGHWAY	LAND MANAGEMENT			9,489	9,489	
TRUNK HIGHWAY	CONSTRUCTION&INNOVATIVCONTRACT			15,336	15,336	
TRUNK HIGHWAY	MATERIALS ENGINEERING			39,063	39,063	
TRUNK HIGHWAY	TECHNICAL SUPPORT			17,200	17,200	
TRUNK HIGHWAY	TECH SUPPORT - MAINT			3,357	3,357	
TRUNK HIGHWAY	METRO CONSTRUCTION			242,667	242,667	
TRUNK HIGHWAY	METRO MAINTENANCE			64,735	64,735	
TRUNK HIGHWAY	DULUTH CONSTRUCTION			89,331	89,331	
TRUNK HIGHWAY	DISTRICT 1 MAINTENANCE			16,756	16,756	
TRUNK HIGHWAY	BEMIDJI CONSTRUCTION			39,454	39,454	
TRUNK HIGHWAY	BEMIDJI MAINTENANCE			14,686	14,686	
TRUNK HIGHWAY	BRAINERD CONSTRUCTION			76,295	76,295	
TRUNK HIGHWAY	BRAINERD MAINTENANCE			14,275	14,275	
TRUNK HIGHWAY	ST. CLOUD MAINTENANCE			14,474	14,474	
TRUNK HIGHWAY	DETROIT LAKES CONSTRUCTION			52,482	52,482	
TRUNK HIGHWAY	DISTRICT 4 MAINTENANCE			20,204	20,204	
TRUNK HIGHWAY	ROCHESTER CONSTRUCTION			80,216	80,216	
TRUNK HIGHWAY	ROCHESTER MAINTENANCE			27,507	27,507	
TRUNK HIGHWAY	DISTRICT 7 CONSTRUCTION			51,605	51,605	
TRUNK HIGHWAY	DISTRICT 7 MAINTENANCE			23,148	23,148	
TRUNK HIGHWAY	WILLMAR CONSTRUCTION			56,459	56,459	
TRUNK HIGHWAY	WILLMAR MAINTENANCE			23,520	23,520	30,479,140
GRAND TOTAL		\$ 996,247	\$ 29,984,706	\$ 4,834,090	\$ 35,815,044	\$ 35,815,044