STATE OF MINNESOTA

COUNTY OF ANOKA

DISTRICT COURT

TENTH JUDICIAL DISTRICT

In re Government Shutdown Litigation,

Case Type: Civil
Chief Judge Kathleen Gearin
Court File No. 02-CV-11-4462

Minnesota Harness Racing, Inc.,
North Metro Harness Initiative, LLC

ORDER

Plaintiffs,

v.

Jim Schowalter, Commissioner of
Minnesota Management
& Budget,

Defendants.

This matter came before the undersigned, on July 12, 2011, pursuant to a motion for

reconsideration, under Minn. R. Gen. P. 115.11, filed by Plaintiffs Minnesota Harness Racing,

Inc. and North Metro Harness Initiative, LLC.

Plaintiffs are represented by John Boyle, Esquire. Defendant Commissioner Schowalter is

represented by Kristyn Anderson, an Assistant Attorney General.

Based upon the files, pleadings, and proceedings herein, the Court makes the following

Order:

1. The motion to reconsider this Court's July 2, 2011 order and July 5, 2011 amended

   order is denied.

2. The attached memorandum is incorporated into this order.

DATED: 7-13-11

BY THE COURT:

Honorable Kathleen Gearin
Chief Judge, Second Judicial District

Memorandum

Because of the importance of this issue to Minnesota's two horse racing tracks, the Court allowed the motion to reconsider to morph into an actual reconsideration of the Court's original order. Before making this decision, the Court reviewed the original submissions of the parties, read the transcripts of both hearings, and reviewed the provisions of Chapters 240, 85A, and 16A. After its review, the Court has not changed its opinion that the funds contained in the funds from licenses and other fees imposed by the Commission and deposited in the State Treasury, pursuant to Minn. Stat. § 240.15, subd. 6, require a biennial appropriation from the Legislature before they can be distributed. That subdivision reads in part: "Receipts in this account are available for the operations of the Commission up to the amount authorized in biennial appropriations from the legislature." The statute further states that these funds are credited to a racing and card-playing regulation account in the special revenue fund.

The funds deposited in the State Treasury and credited to a racing reimbursement account referred to in Minn. Stat. § 240.155, subd. 1, can be used only for veterinarians, stewards, and medical testing of horses. Minn. Stat. § 240.155, subd. 1 states: "Receipts are appropriated to the Commission to pay the costs of providing the services." Unlike some of the funds referred to in the Zoo statutes, there is no language that makes this a statutory appropriation. The definition of statutory appropriation is contained in Minn. Stat. § 16A.01, subd. 14a. This type of appropriation is defined as:

> "A statutory appropriation is one which sets apart a specified or unspecified and open amount of public money or funds of the state general fund for expenditure for a purpose and makes the amount, or a part of it, available for use continuously for a period of time beyond the end of the second fiscal year after the session of the legislature at which the appropriation is made.

Every appropriation stated to be an 'annual appropriation, 'payable annually,' 'appropriated annually,' or 'annually appropriated,' and every appropriation described by equivalent terms or language is a statutory appropriation as defined in this subdivision."

Further complicating this statutory scheme is the fact that Minn. Stat. § 240.155, subd. 2 refers to some stewards as employees of the Commission…"for which a general fund appropriation has been made…" It requires that the reimbursement for these stewards go to the general fund.

Even if the Court's decision regarding § 240.155 funds involves a misinterpretation of that statute, racing and card-playing cannot occur without expenditure of funds from § 240.15. Plaintiffs' creative argument that these activities can take place without there being a Commission is, in the Court's opinion, not correct as this is a highly regulated industry.