

FILED  
Court Administrator

STATE OF MINNESOTA

JUN 30 2011

DISTRICT COURT

COUNTY OF RAMSEY

By WJ Deputy

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. 62-cv-11-5203  
Chief Judge Kathleen Gearin

Special Master Kathleen Blatz

**PETITION OF MINNESOTA  
ZOOLOGICAL GARDEN  
(VERIFIED)**

To: Special Master Kathleen Blatz and Chief Judge Kathleen Gearin:

Pursuant to the Order dated June 29, 2011 by Chief Judge Kathleen Gearin in the above captioned matter, Minnesota Zoological Garden petitions the Court for an Order interpreting its statutory appropriation under Minn. Stat. §85A.04:

**FACTS**

- (1) Petitioner Minnesota Zoological Garden is an independent government agency created by statute, namely Minn. Stat. 85A.01, et. seq. The Zoo is governed by a thirty person Board of Directors, half of whom are appointed by the Governor and half of whom are elected by the Board itself.
- (2) Article XI, Section 1 of the Minnesota Constitution provides that "(n)o money shall be paid out of the treasury of the state except in pursuance of an appropriation by law." Under Article IV of the Minnesota Constitution, the Minnesota legislature is

given authority to pass bills appropriating money for the Minnesota government to operate, subject to approval by the Governor.

- (3) On June 29, 2011 The Honorable Kathleen R. Gearin, Chief Judge of District Court in Ramsey County, Second Judicial District, issued Findings of Fact, Conclusions of Law and an Order determining that certain functions of government constitute and are deemed critical core functions that must be funded under the United States Constitution and the Minnesota State Constitution even though no appropriation has been enacted pursuant to Article XI, Section 1 of the Minnesota Constitution. Among those functions found by Judge Gearin to be critical core functions at the Plaintiff Minnesota Zoological Garden are feeding and keeping the animals, maintenance of the exhibits, and the expenditures to keep the Zoo property safe, secure and healthy. *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court file, No. 62-CV-11-5203.
- (4) Judge Gearin also found that some functions of the Plaintiff Minnesota Zoological Garden are not “critical core functions,” such as expenditures related to the business operation of the Zoo, such as admissions, product sales, concert rentals, and concession fees. *Id.*
- (5) Some government activity is subject to standing or continuous appropriation by statute. Money paid out of the Treasury for these functions is done so in compliance with Article XI, Section 1 because such funds are indeed appropriated, albeit not on a biennium basis but rather on a “standing” or “continuous” basis. For instance, some general education aid for school districts have a standing or continuous appropriation which extends beyond a biennium budget (Minn. Stat. §126C.20 (2006.)) *In Re*

*Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court file, No. 62-CV-11-5203.

- (6) In the same vein, the Plaintiff Minnesota Zoological Garden deposits its gate receipts, concession fees, rental income, contributions, donations, and sales in a state account designated "Zoo Concession and Revenue Account." Minn. Stat. § 85A.04, Subd. 1. This statute, at subdivision 4, provides that money deposited in this account is a standing appropriation to the Zoo Board.
- (7) The legislative history of the Plaintiff Minnesota Zoological Garden is that it was created with the intent that it should strive to be independent and autonomous. Almost 75% of its funding is derived from gate admissions, concession fees, concert rentals, education fees, contributions and donations.
- (8) The Plaintiff Zoological Garden generates its largest revenue receipts in the summer months, and the Fourth of July weekend is one of the largest revenue producing weekends for the Zoo. The Plaintiff has arranged for, and received revenue from, promoters and sponsors of a series of events at its facility which are not able to be moved, subjecting the Plaintiff to substantial damage claims from which it might not financially recover. These events include: a.) Musical and performance concerts scheduled on almost every night in July and August, b.) Zoo camp for children for which fees have been expended, c.) the School for Environmental Science, which admits high school children again in August for the school year, d.) the opening of its new entrance, e.) the opening of new animal exhibits.

#### **CONCLUSIONS OF LAW**

- (1) Article XI, Section 1 provides that:

**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.

- (2) Minn. Stat. §85A.04, Subd. 1, provides that:

**Subdivision 1. Deposit.** All receipts from parking and admission to the Minnesota Zoological Garden shall be deposited in the state treasury and credited to an account in the special revenue fund, and are annually appropriated to the board for operations and maintenance.

- (3) Minn. Stat. §85A.04, sub. 4, provides that:

**“Subdivision 4. Zoo concession and revenue account.** All receipts and interest from the operation of zoo concessions, memberships, and donations must be deposited in a special account in the special revenue fund and are appropriated to the Board.”

- (4) The above two statutes are an integral part of a standing or continuous legislative appropriation which is enacted pursuant to the provisions of Article XI, Section 1 of the Minnesota Constitution.

- (5) Some of the functions of the Plaintiff Minnesota Zoological Garden have been determined by Judge Gearin to be “critical core functions” under the United States and Minnesota Constitutions. These include the feeding and keeping the animals, the maintenance of the exhibits, and expenditures to keep the Zoo property safe, secure and healthy. *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court file, No. 62-CV-11-5203.

- (6) Some of functions of the Plaintiff Minnesota Zoological Garden have not been deemed by Judge Gearin to be “critical core functions.” This is a separate petition, unrelated to core service issue required by the Constitution, to determine whether such other functions of the Plaintiff Zoo are subject to a standing or continuous appropriation by the legislature.

#### **DAHLBERG STANDARDS**

*Dahlberg* Standards: The five prong *Dahlberg* standard is met:

- (a) Nature and background of the relationship between the parties.

The relationship between the Defendant Office of Management & Budget (OMB) and Minnesota Zoological Garden has existed for over thirty three years. A Temporary Order will do no more than continue the relationship that currently exists between the parties. It will do no more than follow the requisites of Minn. Stat. §85A.04.

- (b) Relative harm if relief is denied, compared with that inflicted if relief is granted.

If the Zoo does not receive the funding from its deposits of admission fees, concert fees, concession rent, camp fees, donations and the like, it will substantially impair its budget and cause it to cancel exhibits, thus irreparably reducing the attractiveness of the Zoo and irreparably impairing its mission.

- (c) Likelihood of Zoo eventually prevailing on the merits.

The issue is primarily legal in nature, as briefed above. It is a matter of simple statutory analysis.

- (d) Aspects of the fact situation permitting or requiring consideration of public policy expressed in statutes.

This case involves an interpretation of statutory provisions and carries out the directive of those statutes.

- e.) Administrative burdens involved in judicial supervision and enforcement of a Temporary Order.


The implementation of a temporary order is self-executing and requires little, if any, court supervision.

**PRAYER FOR RELIEF**

The Minnesota Zoological Garden respectfully requests an Order as that attached as Exhibit A.

Dated: June 30, 2011

**BLACKWELL BURKE, P.A.**

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**SPECIAL COUNSEL TO THE  
PLAINTIFF<sup>1</sup>**

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<sup>1</sup> The Plaintiff retained Counsel solely to represent it on judicial matters relating to a government shutdown. The Plaintiff's Counsel does not represent the State of Minnesota generally or any other of the State's departments, entities, subdivisions. Counsel was retained on a pro bono basis directly by the Plaintiff.