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STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota ex rel. Robert W. Mattson,  
Treasurer of the State of Minnesota,

Petitioner,

vs.

Peter J. Kiedrowski, Commissioner  
of Finance of the State of Minnesota,

Respondent.

RESPONDENT'S BRIEF

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Respondent.

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RESPONDENT'S BRIEF

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LEGAL ISSUES

1. Do certain selected provisions of 1985 Minn. Laws Ch. 13 (Spec. Sess.) unconstitutionally deprive petitioner of his powers, as Treasurer, under the Minnesota Constitution?

The trial court did not rule.

2. Does 1985 Minn. Laws Ch. 13 (Spec. Sess.), as it pertains to petitioner, violate Minn. Const. art. IV § 17, which requires laws to embrace only one subject which is to be expressed in the title?

The trial court did not rule.

## STATEMENT OF THE CASE AND FACTS

### **I. STATEMENT OF THE CASE**

This action was commenced in this Court on October 17, 1985, as a Petition for Writ of Quo Warranto. Petitioner is the current Minnesota State Treasurer and claims that some of the provisions of 1985 Minn. Laws Ch. 13 relating to his office are invalid under the Minnesota Constitution.

Respondent, the Minnesota Commissioner of Finance, did not challenge this Court's jurisdiction but contended that it would be appropriate to have a factual record upon which to base a ruling on the legal issues. Respondent recommended that the factual record be developed by: (1) referring this matter to state district court; (2) appointing a special master; or (3) a stipulation of facts. Respondent's Memorandum Concerning Court's Jurisdiction and Procedural Matters at 7-8, October 25, 1985. Petitioner filed Petitioner's Responsive Memorandum on Procedural Matters on October 29, 1985, asserting that there were no relevant fact issues and, therefore, opposing respondent's three proposed options.

This Court issued an order, dated November 7, 1985, remanding the proceeding to Ramsey County District Court:

(1) to determine whether factual questions, if any, are presented in connection with the petition;

(2) to determine whether, if a factual dispute exists, findings of fact are relevant to the ultimate issue presented; and

(3) to make the requisite findings of fact, if necessary.

Following the filing of respondent's answer and further briefing, the Honorable Bertrand Poritsky, Judge of Ramsey County District Court, issued an order on February 4, 1985. In that order he ruled that the petition did present fact issues requiring a hearing as to petitioner's claim that the challenged law illegally deprived him of his constitutional duties. As a result of that order, the parties agreed to a Stipulation of Facts, which was adopted by the district court as its Findings of Fact on March 18, 1986.

Pursuant to this Court's Order of November 7, 1985, this matter has now been referred back to this Court for a determination of the legal issues.

## **II. STATEMENT OF FACTS**

This is a dispute between the Minnesota State Treasurer and the Commissioner of Finance concerning their duties as to the care and custody of state funds. In reality this case is a test between the Treasurer and the State Legislature regarding the extent to which a legislature can prescribe the salaries and duties of the treasurer under Minn. Const. art. V, § 4.

The legislature enacted 1985 Minn. Laws Ch. 13 (Spec. Sess.) (hereinafter "Chapter 13"), which resulted in the repeal of 30 statutes and the amendment of several others pertaining to the treasurer's duties. The petition herein challenges only 15 of the repealers and does not contest nine of the amendatory sections of

the law. Petition for Writ of Quo Warranto and Memorandum of Law (hereinafter "Petition") at 2-4 and Appendix "A" hereto. He also disputes those portions of Chapter 13 which abolish seven personnel positions in his office and transfer nine others to respondent and which set his biennial appropriation for FY 1986 and FY 1987 at \$162,600 and \$163,700 respectively. Id. at 3.

Section 13 of Chapter 13 provides, in part:

Except as provided in the Minnesota Constitution, article V; article XI, sections 7 and 8; and Minnesota Statutes, sections 9.011; 11A.03; and 16A.27, subdivision 2, the responsibilities of the state treasurer are transferred to the commissioner of finance under Minnesota Statutes, section 15.039.

The purpose of this reorganization is to increase the efficiency of state government while maintaining the system of checks and balances provided for in the Minnesota Constitution. This reorganization and transfer effects increased efficiency through elimination of duplicative functions and integration of similar financial duties while maintaining the constitutional responsibilities of the treasurer and the integrity of the accounting system. Internal control is maintained by the separation within the department of finance of the handling of cash and other assets from the accounting records, the daily review by the treasurer of reconciliation reports from the commissioner of finance of state balances on deposit in financial institutions, and audits by the legislative auditor of both the records kept by the treasurer and the records kept by the commissioner of finance.

Under the above provision, petitioner retains four separate constitutional and statutory functions.

Petitioner seeks an order from this Court declaring Chapter 13 unconstitutional, transferring at least \$844,000 (\$422,000 per year) to his office from respondent's biennial budget, and transferring back to petitioner from respondent nine staff

positions. Id. at 1-2. Petitioner has employed, since July 1, 1985, four persons in his office (including himself), compared to 17 employees before that date. The parties disagree regarding the treasurer's authority to designate two of the four employees as a deputy treasurer and as a personal secretary.

Since 1858, when the treasurer's office was created, the legislature has repealed or altered statutes relating to that office's duties on at least 30 different occasions. See Addendum "C" hereto. Those legislative actions included: authorizing the treasurer to appoint a deputy (1899 Minn. Laws Ch. 298); creating a state board of deposit to designate state bank accounts (1901 Minn. Laws Ch. 140); transferring to the commissioner of insurance the custody of certain securities (1909 Minn. Laws Ch. 478); transferring the gas tax collections to the state's chief oil inspector (1927 Minn. Laws Ch. 191, § 2); creating in the treasurer's office a revolving fund for cashing checks (1935 Minn. Laws Ch. 19); creating the department of finance, which received some of the state auditor's previous duties (1973 Minn. Laws Ch. 492); and more recently transferring to the commissioner of commerce the duty to control unclaimed property accounts (1981 Minn. Laws (3 Sp. 2) art. 1, § 2).

The state's systems for collecting, depositing, and disbursing money had been the responsibility of several state officials before the enactment of Chapter 13.



A. Collecting and Depositing Functions.

Historically most state government receipts were in the form of taxes and fees. In 1860 \$113,000 of the total \$139,000 in state receipts represented property taxes sent directly to the treasurer. Report of State Treasurer, 1861 Minn. Laws 363. The following is a list of other taxes and fees collected by various officials during the 100+ years preceding July 1, 1985:

<u>TAX/FEE</u>	<u>ORIGINAL RECIPIENT</u>	<u>MOST RECENT RECEPIENT</u>
1. Insurance Premium	Treasurer (1872 Minn. Gen. Laws 17, 38)	Commissioner of Revenue (1984 Minn. Laws 1242, 1248)
2. Inheritance	Treasurer (1905 Minn. Gen. Laws 427, 428)	Commissioner of Revenue (1943 Minn. Laws 862)
3. Gasoline	Treasurer (1925 Minn. Laws 369, 370, 371)	Commissioner of Revenue (1939 Minn. Laws 908, 930)
4. Income	Tax Commissioner (1933 Minn. Laws 688, 717)	Commissioner of Revenue (Minn. Stat. § 290.45)
5. Cigarette	Commissioner of Taxation (1947 Minn. Laws 1122, 1129-31)	Commissioner of Revenue (Minn. Stat. § 297.35, subd. 1)
6. Sales	Commissioner of Taxation (1967 Minn. Laws 2143, 2188)	Commissioner of Revenue (Minn. Stat. § 297A.26)
7. Motor Vehicle Excise	Registrar of Motor Vehicles (1971 Minn. Laws 1675, 1679)	Same

<u>TAX/FEE</u>	<u>ORIGINAL RECIPIENT</u>	<u>MOST RECENT RECEPIENT</u>
8. Motor Vehicle Registration	Secretary of State as Motor Vehicle Registrar (1921 Minn. Laws 708, 722-23)	Commissioner of Public Safety (1969 Minn. Laws 2312, 2322)
9. Driver License Fees	Commissioner of Highways (1939 Minn. Laws 780, 784-85)	Commissioner of Public Safety (1969 Minn. Laws 2312, 2324)

In recent years prior to the passage of Chapter 13, all payments to the state were collected by the agencies to whom they were owed. As measured by the total number of payment transactions, most were deposited by the recipient agencies directly into state bank accounts. Findings of Fact (hereinafter "F.F.") at 4, ¶ 6. The agencies would then send a report to the treasurer on a Department of Finance "FIN 8" form along with the deposit slips for verification. Id. As measured by the total amount of money received by state agencies, most of it (checks and cash) would be sent with a FIN 8 report to the treasurer's office in batches. Each batch contained an adding machine tape showing the cumulation of money therein. Id. The treasurer's staff would recount the cash batches to verify the amount on the tapes but, except for checks exceeding \$500,000, would not separately count and verify the amounts of check batches. Id. at 5. The deposit slip information was fed into the treasurer's computer to enable his office to compile trial balance reports. Id. The same information was entered into the statewide accounting system ("SWAS"), which is the central automated accounting system operated by the Department of Finance for state budget and accounting administration. Id. at 5-6.

As of 1873, the treasurer ceased holding state money. Since that time all state funds have been deposited in private banking institutions, of which there are now 305 throughout the state. F.F. at 6-7, ¶ 8. The depository banks have been selected through a competitive bidding process administered by the commissioner of finance, with the ultimate designations being made by the executive council. Id.

B. Disbursement Functions

The process of initiating disbursements of state money to private creditors for goods and services was unaffected by Chapter 13. Id. at 7, ¶ 9. Originally it was the state auditor who was responsible for paying state claims. 1858 Minn. Gen. Laws 150-51. The authority to approve payments and issue warrants thereon was given to the commissioner of finance by 1973 Minn. Laws 1081-83. Under Minn. Stat. § 16A.27, subd. 2, the treasurer is still responsible for reviewing daily bank balance reports to insure that depository banks have not paid out more funds than authorized by the warrants.

The initial decision to pay a particular claim is made by the state agency against whom the claim is made. F.F. at 7, ¶ 9. For example, if Department "X" receives a bill of \$1,000 for office equipment, its staff must first verify the claim. Department "X" then notifies the Department of Finance, which uses the SWAS to determine if such funds are available in Department "X's" appropriation. If such funds are available, the Department of Finance issues a warrant (i.e., a check) to the creditor. Id. at 7,

8, ¶¶ 9 and 12. The treasurer's and commissioner's signatures were affixed to the warrants by a facsimile stamping machine operated by the Department of Finance. Id.

Before the enactment of Chapter 13, the treasurer did have a role in distributing state employee payroll warrants. The process was the same as used for payments to private vendors, except that payroll warrants were sent to the treasurer's office to be picked up by agents of each state agency.

The process for redeeming and verifying state warrants presented by clearing banks entailed functions of both petitioner and respondent before July 1, 1985. The treasurer's role was eliminated by Chapter 13, except that he is still authorized by Minn. Stat. § 16A.27, subd. 2, to review the daily depository bank balances. F.F. at 8-9, ¶¶ 13-14.

Despite the language of Minn. Stat. § 7.03, the practice in modern times has not made it possible for the treasurer to keep records, "showing every transaction . . . the date of each, the amount and source or object of each sum received and disbursed, and the name of every person paying in or receiving money."

## ARGUMENT

**I. UNDER EITHER A LITERAL OR PRACTICAL CONSTRUCTION OF THE MINNESOTA CONSTITUTION, THE LEGISLATURE IS AUTHORIZED TO CHANGE THE STATUTORY FUNCTIONS OF THE TREASURER IN THE MANNER REFLECTED BY MINN. LAWS 1985, CH. 13 (SPEC. SESS.)**

To a great extent the constitutionality of Chapter 13<sup>1/</sup> is determined by the express language of section 13 of Chapter 13 itself. It provides, in part:

Except as provided in the Minnesota Constitution, article V; article XI, sections 7 and 8; and Minnesota Statutes, sections 9.011; 11A.03; and 16A.27, subdivision 2, the responsibilities of the state treasurer are transferred to the commissioner of finance under Minnesota Statutes, section 15.039.

The purpose of this reorganization is to increase the efficiency of state government while maintaining the system of checks and balances provided for in the Minnesota Constitution. This reorganization and transfer effects increased efficiency through elimination of duplicative functions and integration of similar financial duties while maintaining the constitutional responsibilities of the treasurer and the integrity of the accounting system.

(Emphasis added.)

The legislature was cognizant of the treasurer's constitutional status and the limitations on the extent to which it could act in transferring the treasurer's duties to another executive branch officer. Its express intent was not only to avoid any inteference with the treasurer's constitutional functions but also to retain the statutory duties under Minn. Stat. §§ 9.011; 11A.03; and 16A.27, subd. 2 (1984).<sup>2/</sup> Posed another way, the

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<sup>1/</sup> Throughout this brief the term "Chapter 13" is used to refer to those provisions of Minn. Laws 1985, ch. 13, §§ 13, et seq. (Spec. Sess.) which pertain to the treasurer.

<sup>2/</sup> As explained more fully hereinafter, Chapter 13 left to the treasurer three important statutory functions. Minn. Stat.

(footnote continued)



explicit legislative intent was not to transfer any of the treasurer's responsibilities which are established by the Minnesota Constitution.

Petitioner contends that, notwithstanding the expressed legislative intent, Chapter 13 transgresses the Constitution by repealing or transferring to respondent constitutional duties of the treasurer. Petition at 2-4. To answer that contention one ought logically to look to the Constitution to determine what those duties are. As noted in Chapter 13 at section 13, there are three separate constitutional provisions pertaining to the treasurer's responsibilities:

The term of office of the secretary of state, treasurer, attorney general and state auditor is four years and until a successor is chosen and qualified. The duties and salaries of the executive officers shall be prescribed by law.

Minn. Const. art. V, § 4 (emphasis added);<sup>3/</sup>

---

(Footnote continued)

§ 9.011 retains his membership on the State Executive Council, an important policy-making and management body in state government. Minn. Stat. § 11A.03 makes the treasurer one of five members of the State Board of Investment, which has substantial financial management powers under Minn. Stat. ch. 11A. Finally, under Minn. Stat. § 16A.27, subd. 2, the treasurer is required to review the state's daily cash reconciliation reports from the Commissioner of Finance.

<sup>3/</sup> Petitioner asserts that the pre-1974 version of the counterpart to Minn. Const. art. V, § 4 provided: "The further duties and salaries of the executive officers shall each be prescribed by law." Petition at 12, 14. Since it is uncontested that the Constitution does give the treasurer "further" duties in art. XI, §§ 7 and 8, that distinction is unimportant for purposes of the legislative intent of Chapter 13. His claim

(footnote continued)

Public debt other than certificates of indebtedness authorized in section 6 shall be evidenced by the issuance of bonds of the state. All bonds issued under the provisions of this section shall mature not more than 20 years from their respective dates of issue and each law authorizing the issuance of bonds shall distinctly specify the purpose thereof and the maximum amount of the proceeds authorized to be expended for each purpose. The state treasurer shall maintain a separate and special state bond fund on his official books and records.

Minn. Const. art. XI, § 7 (emphasis added);

A board of investment consisting of the governor, the state auditor, the state treasurer, the secretary of state, and the attorney general is hereby constituted for the purpose of administering and directing the investment of all state funds. The board shall not permit state funds to be used for the underwriting or direct purchase of municipal securities from the issuer or the issuer's agent.

Minn. Const. art. XI, § 8 (emphasis added).

Petitioner concedes that Chapter 13 does not diminish the treasurer's constitutional functions under article XI, §§ 7 and 8. He urges as the "sole issue in this proceeding whether the second sentence of article V, section 4" permits the legislature to enact Chapter 13. Petition at 8. Therefore, the question is one of interpreting the statement that the treasurer's duties "shall be prescribed by law."

---

(Footnote continued)

that the restructured 1974 Constitution erroneously omitted the treasurer's duty to publish an annual report on state finances is of no consequence. The session laws suggest that such a report had not been published for many years. Furthermore, it has little bearing on the validity of Chapter 13.

A. Minn. Const. Art. V, § 4, On Its Face Empowers The Legislature To Prescribe The Duties Of The Treasurer.

The construction of the Constitution or statutes must begin with the literal wording of the provisions in question. If, according to the normal rules of grammar and common usage, the words are clear on their face, it is not necessary to use extrinsic aids to construe under the guise of determining the "spirit" of the language. State ex rel. Gardner v. Holm, 241 Minn. 125, 129-30, 62 N.W.2d 52, 55 (1954); State ex rel. Chase v. Babcock, 175 Minn. 103, 107-08, 220 N.W. 408, 410 (1928); State v. Corbett, 57 Minn. 345, 349-50, 59 N.W. 317, 318 (1894). See also Minn. Stat. §§ 645.08(1), 645.16 (1984).

The statement in Minn. Const. art. V, § 4, that the treasurer's duties "shall be prescribed by law" is unambiguous. It is not qualified; it does not contain technical or obscure language. In fact, this Court years ago adopted the literal and common-sense construction of section 4 by concluding that the legislature had the express power to prescribe the duties of executive officers:

The Constitution imposes certain duties and powers upon the Governor, while the duties of the other members of the executive branch are left for legislative enactment . . . The distinction is marked between the nature of those duties which necessarily pertain to the office of the chief executive, as defined by Constitution, and those additional duties which are imposed by law upon the Governor, but which might have been delegated to some other official.

State ex rel. Kinsella v. Eberhart, 116 Minn. 313, 319-20, 133 N.W. 857, 860 (1911). The above statement from Eberhart establishes that the phrase "prescribed by law" refers to legislative enactment, a

common understanding of such terms. That interpretation is consistent with the meaning attributed to the same phrase in other states' constitutions. Burns v. Butscher, 187 So. 2d 594, 595 (Fla. 1966); Torres v. Grant, 63 N. Mex. 106, 108, 314 P.2d 712 (1957); People v. Wolf, 338 Mich. 515, 535, 61 N.W.2d 767 (1953); Bridgehampton School District No. 2 v. Superintendent of Public Instruction, 323 Mich. 615, 621, 36 N.W.2d 166, 169 (1949); State v. Totten, 44 N.D. 557, 559-60, 175 N.W. 563, 566 (1919). See also People v. McCullough, 254 Ill. 9, 16-17, 98 N.E. 156, 158, 159 (1912), which seems to be relied on by petitioner, even though the Court's holding is contrary to his assertion. Petition at 13.

In the McCullough case three employees of the Illinois Secretary of State's office challenged the powers of a statutory civil service commission under the theory that it intruded unconstitutionally upon the powers of the Secretary of State. The court rejected that claim and held that, under a constitutional provision similar to that in article V, § 4:

The officers are required . . . to perform such duties as may be required by law, and thus, except as specific directions or prohibitions are found elsewhere in the instrument [constitution], the constitution commits to the legislature the entire question of the powers and duties of all the officers of the executive department, their relations with one another and the manner and means by which they shall enforce the laws. The fact that such officers are created by the constitution does not confer unrestricted power on them and, except as to such rights and powers as they derive from various provisions of the constitution, they are entirely subject to the will of the legislature.

Id. (emphasis added).

It follows that article V, § 4, authorizes the legislature to prescribe the treasurer's duties by statutes. Even the pre-1974 version of that constitutional provision authorizes the legislature to prescribe the "further" duties of the treasurer. Since the Constitution itself in article XI, §§ 7 and 8, provides certain functions for the treasurer, the legislature has been empowered to enact additional ("further") duties for that officer.

Indeed, the fact that the Constitution does provide specific duties for the treasurer is further support for a literal interpretation of article V, § 4. The drafters of the Constitution certainly had the opportunity and knew how to specify any other duties of the treasurer they desired to "constitutionalize." They chose not to do so and, instead, expressly entrusted that power to the legislature. Petitioner's case would arguably be stronger if the Constitution had not specified any duties whatsoever for the treasurer.

The existence of other express constitutional and statutory duties of the treasurer in the instant case are in contrast to the situations in cases from other jurisdictions relied on by petitioner. See Petition at 13-16. For example, the court in Thompson v. Legislative Audit Commission, 79 N. Mex. 693, 448 P.2d 799 (1969), struck down a statute which literally stripped the state auditor of every statutory duty and transferred all office "equipment, supplies, records and any other property or thing held by him [auditor] in his official capacity" and reduced his salary to one dollar per year. Since the auditor did not have any express



duties under the New Mexico Constitution, the court concluded that the legislation had truly abolished a constitutional office. Even in Thompson, however, the court acknowledged its prior decision in Torres v. Grant, 63 N. Mex. 1065, 314 P.2d 712 (1957), in which it upheld a statute which removed most of the auditor's pre-audit duties. Similarly, in Hudson v. Kelly, 76 Ariz. 255, 265, 263 P.2d 362, 368-69 (1953), the court's holding against a statute was premised largely on a finding that the law totally removed from the auditor independent auditing authority. The scenarios in Thompson and Hudson are significantly different from the setting here. The Minnesota treasurer clearly has both other constitutional duties and statutory functions even after the passage of Chapter 13.

Petitioner's own claims acknowledge the authority of the legislature to prescribe the treasurer's duties. He contends that only some provisions of Chapter 13, as they relate to his office, are unconstitutional. As shown in Addendum "A," there are numerous statutory functions which have been transferred to respondent or repealed by Chapter 13 but not challenged by petitioner.<sup>4/</sup> Furthermore, the petition disputes the validity of the transfer of nine personnel positions to the Department of Finance but does not contest the abolition of seven treasurer's positions.

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<sup>4/</sup> Addendum "A" contains an outline of the Chapter 13 changes in the treasurer's duties not contested herein. Those changes, to a great extent, are not distinguishable from many of the Chapter 13 provisions challenged by petitioner; yet, he concedes their constitutionality.

It seems that petitioner interprets article V, § 4, to allow the legislature to set only some of his duties. He asks this Court, therefore, to review each statutory change by Chapter 13 to determine whether the legislature has crossed over an imaginary constitutional line in carrying out its functions. There is, however, no need for line-drawing, because the unambiguous language of article V, § 4, gives the legislature express power to enact Chapter 13. It is unnecessary to look for a hidden meaning or underlying spirit behind article V, § 4, since the language speaks for itself.

B. Practical And Extrinsic Rules Of Construction Also Establish That Chapter 13 Is Consistent With Constitutional Intent.

Petitioner's primary argument seems to be that the treasurer possesses historic common law or inherent powers that must be read into the Constitution and cannot be taken away by legislative enactment. Petition at 11-12.

Even if one were to eschew the common meaning of the words contained in article V, § 4, the conclusion is the same. That is, Chapter 13 is a valid exercise of the legislature's own constitutional duties.

Again, reference to the Constitution itself (beyond article V, § 4) shows the defect of petitioner's inherent powers argument. For example, when the Minnesota Constitution was first adopted it contained a schedule which provides at section 2:

All laws now in force in the Territory of Minnesota not repugnant to this Constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

(Emphasis added.)

The foregoing provision had the effect of elevating the territorial treasurer's duties to legal status following adoption of the constitution. Yet, those existing duties were subject to modification or elimination by legislative action anytime thereafter. The courts in at least three other states with similar or identical constitutional schedules have concluded that they give the legislature plenary power to abrogate the statutory functions of certain officers. See Torres v. Grant, 63 N. Mex. 106, 108-09, 314 P.2d 712, 713 (1957); Johnson v. Commonwealth, 291 Ky. 829, 840, 841, 165 S.W.2d 820, 828 (1942); People v. McCullough, 254 Ill. 9, 23, 98 N.E. 156, 158, 159 (1912).

It is noteworthy to consider the statutes describing the treasurer's powers in 1858 at the time the constitutional schedule went into effect. Although the list of those duties is shown in Addendum "B," a review of some of them here is instructive. Pursuant to General Laws 1858, ch. LIX, the treasurer was required to:

1. "have charge of, and safely keep all public moneys . . . and pay out the same as directed by law, and perform all such other duties as now are or shall hereafter be required of him by the laws of this State"  
[section 2];

2. "keep an accurate account of the receipts and disbursements at the treasury" [section 6]; and

3. "receive in payment . . . bills drawn by the Auditor of the State . . . or redeem the same . . . ."

[section 7].

(Emphasis added.)

The above and other duties of the treasurer in 1858 are strikingly comparable to those functions asserted by petitioner as fundamental and inherent to his office. Petition at 8-9, 12-13. Yet, it is explicitly clear that the framers of the Constitution and its schedule at § 2 intended that the legislature have the power to alter or repeal all laws (such as those above) existing in 1858. Thus, to the extent article V, § 4, even requires extrinsic construction, its literal language is amply supported by the constitutional schedule at § 2.

Petitioner uses scant authority for his argument that a treasurer has certain historic and inherent powers that are implicitly constitutional. See Petition at 9, 12-14. He relies on his own characterization and dictionary definitions of what a treasurer is as bases for elevating such definitions to constitutional status. That kind of approach clashes with the powers of another constitutional body (the legislature), which are expressly set forth in the Constitution itself at article V, § 4 and § 2 of the schedule. To accept petitioner's argument this Court would necessarily preempt the express powers of one constitutional body by the implied powers of another.

Moreover, petitioner is simply wrong in his portrayal of the commonly understood functions of a treasurer. His reliance, for example, on the 1973 report of the Minnesota Constitutional Study Commission is misplaced. See Petition at 11. There does not appear to be any specific definition of a "treasurer" and not any recommendation concerning the office's status. See F.F. at Ex. C. Yet, other Minnesota task forces which have studied the functions and public purposes of constitutional offices have reached conclusions at odds with petitioner's characterizations of what a treasurer is. The 1948 Constitutional Commission of Minnesota viewed the treasurer as purely a "ministerial" officer without any discretionary "policy formulation or control functions." F.F., Ex. A at 36-37. That Commission even recommended that the treasurer's constitutional status be abolished since "most of [his] duties are statutory" and could be performed by other executive agencies. Id. The 1972 Report of the Governor's Loaned Executives Action Program described the state's financial control systems as being poorly managed under existing structures and recommended the transfer of some duties to the Department of Finance.<sup>5/</sup> F.F., Ex. B at 6. Finally, the 1984 Report of the Governor's Task Force On Constitutional Officers concluded that the office of treasurer did not come within any of the following three definitions:

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<sup>5/</sup> Following the so-called 1972 LEAP Report, the legislature created the Department of Finance and transferred many of the functions of the former state public examiner and state auditor (another constitutional officer). 1973 Minn. Laws Ch. 492.



1. The position requires strong leadership and accountability with high public visibility.

2. The position provides for the performance of a unique function or group of functions which, because of their nature, require the incumbent to be elected.

3. The position provides an important and unique contribution to the system of "checks and balances" and accountability in state government."

F.F., Ex. D at 8. The Task Force, therefore, joined previous constitutional study groups in recommending that the treasurer no longer be an elective office, because of its basically ministerial functions. Id. at 6-8. Such conclusions and views regarding the functions of the treasurer greatly undercut petitioner's claim to important implied powers.

1. Historically Many Officials Had State Financial Management Responsibilities.

The attempt to interpret the Constitution as containing implied duties of the treasurer also fails when examined from a historical perspective. As noted hereinabove and in Addendum "B," at the time the Minnesota Constitution was adopted the treasurer carried over certain territorial financial responsibilities, all of which were subject to alteration or repeal. Even when analyzed at that early date, the alleged powers regarding the "receipt, care, custody and disbursement" of state funds were not exclusive to the treasurer. Compare Petition at 2.

The disbursement of state money was controlled in 1858 by the state auditor, not the treasurer. Under 1858 Minn. Gen. Laws §§ 150, 151, the auditor was the officer responsible for examining claims against the state to determine their validity and issuing

bills or warrants in payment thereof. Many years later the duty to control disbursements was transferred to the Commissioner of Finance by 1973 Minn. Laws Ch. 492, §§ 1-3. See Minn. Stat. § 16A.56 (1984) and F.F. at 7, ¶ 9. Since 1973 the process of validating claims and disbursing state payments thereon has been controlled exclusively by the Department of Finance and the respective state agencies against whom the bills or claims are presented. Even the treasurer's signature on the payment warrants had been affixed by a facsimile stamping machine, which has been operated by the Department of Finance. During the past five years there was not even a representative of the treasurer present as this process occurred. Id.

Since 1873 the treasurer has also had a diminished role in the actual making of disbursements. That is because, from that time to the present, state funds have been deposited in private banking institutions, which are chosen by the State Executive Council based on a competitive bidding process administered by the Commissioner of Finance. Id. at 6, ¶ 8. There are now 305 different state bank accounts throughout Minnesota.

Similarly, the treasurer has had a minor role with respect to the care and custody of state money. When the Department of Finance was created 13 years ago, the Commissioner was given the power to "control the amount and manner of deposit of state funds." 1973 Minn. Laws Ch. 492, §§ 1, 7-9 (codified as Minn. Stat. § 16A.27, subd. 1).

The treasurer's role in investing state funds was also a function which was, at best, shared with other officials. Since 1886 the investment decisions have been made by a state Board of Investment;<sup>6/</sup> and the amounts of funds have been certified for that purpose by the Commissioner of Finance. See Minn. Stat. § 11A.20, subd. 1 (1984) and F.F. at 10, ¶ 19.

Finally, the treasurer's duties as to the receipt of state funds have not been static or exclusive in Minnesota history. For example, in 1860, most of the money received by the state was in the form of property taxes paid by county treasurers directly to the state treasurer, amounting to about \$113,000 of the total \$139,000 in state receipts. Report of State Treasurer, 1861 Minn. Laws 363.

In 1872, the two percent insurance premium tax was made payable to the state treasurer. 1872 Minn. Gen. Laws 17, 38 (codified as amended at Minn. Stat. § 60A.15, subd. 1 (1967)). But in 1969, the tax was made payable to the state treasurer "through the commissioner of insurance." 1969 Minn. Laws 2008. And in 1984, the tax was made payable directly to the commissioner of revenue. 1984 Minn. Laws 1242, 1248 (codified at Minn. Stat. § 60A.15, subd. 1 (1984)).

The state inheritance tax was originally made payable to the state treasurer. 1905 Minn. Gen. Laws 427, 428. But it was later made payable to the commissioner of taxation, now called the

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<sup>6/</sup> The treasurer continues to be a member of the Board of Investment, even after the enactment of Chapter 13.

commissioner of revenue. 1943 Minn. Laws 862 (codified as amended at Minn. Stat. § 291.13 (1984)).

The state gasoline tax was originally made payable to the state treasurer, 1925 Minn. Laws 369, 370-71, but was soon made payable instead to the state's chief oil inspector (really the dairy and food commissioner, 1919 Minn. Laws 705), who forwarded his receipts to the state treasurer. In 1939, the state gasoline tax was made payable to the commissioner of taxation, now the commissioner of revenue. 1939 Minn. Laws 908, 930 (codified as amended at Minn. Stat. § 296.14 (1984)).

When the state imposed the first income tax, it was made payable, not to the state treasurer, but to the Minnesota Tax Commission, now the commissioner of revenue. 1933 Minn. Laws 688, 717 (codified as amended at Minn. Stat. § 290.45 (1984)).

The cigarette tax has always been payable to the commissioner of taxation, now the commissioner of revenue. 1947 Minn. Laws 1122, 1129-31 (codified as amended at Minn. Stat. § 297.07 (1984)).

The sales tax has always been paid to the commissioner of taxation, now the commissioner of revenue. 1967 Minn. Laws 2143, 2188 (codified as amended at Minn. Stat. § 297A.26 (1984)). The motor vehicle excise tax has always been collected by the registrar of motor vehicles, acting as the agent of the commissioner of taxation, now the commissioner of revenue. 1971 Minn. Laws 1675, 1679 (codified as amended at Minn. Stat. § 297B.11 (1985 Supp.)).

The motor vehicle registration tax has always been collected by the registrar of motor vehicles, 1921 Minn. Laws 708, 709-10 (codified as amended at Minn. Stat. § 168.33 (1984)), now the commissioner of public safety.

Driver license fees have never been payable to the state treasurer. Originally, they were payable to the commissioner of highways. 1939 Minn. Laws 780, 784-85 (codified as amended at Minn. Stat. § 171.06.-07 (1984)).

One of the stated purposes of enacting the sales tax in 1967 was to provide property tax relief by, among other things, eliminating the need for a state property tax to pay off state bonds. Tax Reform and Relief Act of 1967, ex. sess. ch. 32, art. 3, § 1, 1967 Minn. Laws 2143, 2148 (codified as amended at Minn. Stat. § 16A.641, subds. 10-12 (1984 and Supp. 1985)). With the elimination of the state property tax, the role of the state treasurer as collector of state taxes was virtually ended. In fact, the treasurer long ago ceased to collect any of the state's major taxes.

2. Modern Trends Have Led to a Diminished Role of the Treasurer.

There are other miscellaneous functions relating to the state's financial management which are illustrative of how diminished the treasurer's role has been in more recent years:

1. The statewide accounting system (SWAS) is the central automated accounting system operated by the Department of Finance for state budget and accounting

administration. The SWAS provides expenditure controls and produces daily cash trial balances for all state agency appropriations. F.F. at 5-6.

2. Prior to July 1, 1985, the Treasurer had a shared role with respondent and other agencies with respect to collecting some state revenues. In recent years most individual payments of money to the state were made directly to the state agencies affected and were then taken to the private banking institutions for deposit and reported to the Treasurer after the fact on a Department of Finance form. Id. at 4, ¶ 6. Those payments constituting the greatest monetary amounts had been taken by agency personnel to the treasurer's office before being taken to the banks for deposit. Before deposit the treasurer's staff would recount the cash to verify the amount receipted for but would not recount all the checks for the same purpose. Id.

3. Even before the enactment of Chapter 13 it was the respondent who was in charge of reviewing supporting documentation for state warrants and deciding whether enough state funds were available to pay the warrants. Id. at 9, ¶ 15.

4. Despite the fact that, before 1985, Minn. Stat. §§ 7.13-.15 (1984), gave petitioner and respondent functions relative to drafts, they had been used only minimally during the past 14 years, and

drafts were totally eliminated in 1984. Id. at 9,  
¶ 16.

5. Similarly, the last time aeronautics bonds were sold under Minn. Stat. §§ 360.302, .306, was 1963, and the last of those bonds were retired in 1983. Id. at ¶ 18.

6. Although the treasurer had been, before 1985, the ex officio custodian of the state unemployment compensation fund under Minn. Stat. § 268.05 (1984), in practice those funds were managed by a different agency of government. Id. at 11, ¶ 22.

In contrast to all of the foregoing definitions of the treasurer's role in managing state finances, the functions of the commissioner of finance have been significant since 1973.

The commissioner has prepared the state's biennial budget with four-year revenue and expenditure projections. Minn. Stat. § 16A.04 (1984). He is also required to:

(2) manage the state's financial affairs;

(3) keep the state's general account books according to generally accepted government accounting principles;

(4) keep expenditure and revenue accounts according to generally accepted government accounting principles;

(5) develop, provide instructions for, prescribe, and manage a state uniform accounting system; and

(6) provide to the state the expertise to ensure that all state funds are accounted for under generally accepted government accounting principles.

Minn. Stat. § 16A.055, subd. 1 (emphasis added). Subdivision 3 of that same statute mandates that executive branch agencies give respondent free access to their financial records.

Likewise, executive agencies have been directed to provide respondent financial reports and objectives. Minn. Stat. § 16A.06, subds. 2 and 4 (1984). Furthermore, respondent has been required to "exercise constant supervision over state agencies to insure prompt payment" of claims against the state. Minn. Stat. § 16A.124, subd. 2 (1984).

Finally, as noted above, respondent controls the amount and manner of deposits of state funds. Minn. Stat. § 16A.27, subd. 1 (1984).

It follows from all of the foregoing that the treasurer's claim to exclusive implied and historic powers over the state treasury is plainly wrong. Indeed, there are two fundamental lessons clear from historical practice. First, changing economic, social and political conditions have required more progressive and different methods for managing the care, custody, receipt and disbursements of state funds. Even if there were implied constitutional duties of a treasurer, they must be viewed in the light of changing needs. See State ex rel. Chase v. Babcock, 175 Minn. 103, 107-08, 220 N.W. 408, 410 (1928); Davis v. Hugo, 81 Minn. 220, 222-23, 83 N.W. 984, 985 (1900). Second, the unchallenged legislative repeals and modifications of the treasurer's statutory functions during the past 125 years are strong evidence of the legislative powers under Minn. Const. art. V, § 4, and section 2 of



the constitutional schedule.<sup>7/</sup> Cf. State ex rel. Kinsella v. Eberhart, 116 Minn. 313, 319-20, 133 N.W. 857, 860 (1911).

The above lessons teach that extrinsic aids are not helpful in establishing implied constitutional powers of the treasurer. The historic practice has, instead, been one of diffused authority over the management of state finances. Using either a literal or implied construction of the Constitution leads to the conclusion that the legislature has the authority to enact Chapter 13.

**II. CHAPTER 13 IS CONSISTENT WITH THE LEGISLATURE'S OWN CONSTITUTIONAL PREROGATIVES AND WITH SEPARATION OF POWERS PRINCIPLES.**

Though the maxim is well established, the instant case suggests a need for repeating that legislative enactments such as Chapter 13 carry a heavy presumption of constitutionality. George Benz Sons, Inc. v. Ericson, 227 Minn. 1, 9-10, 34 N.W.2d 725, 731 (1948); Reed v. Bjornson, 191 Minn. 254, 257, 253 N.W. 102, 104 (1934); State v. Corbett, 57 Minn. 345, 349-50, 59 N.W. 317, 318 (1894). This Court in Corbett made the following statement that is especially pertinent to petitioner's claims here:

Furthermore, courts are not at liberty to declare a statute unconstitutional because, in their opinion, it is opposed to the fundamental principles of republican government, unless those principles are placed beyond legislative encroachment by the constitution; or because it is opposed to a spirit supposed to pervade the constitution, but not expressed in words, or because it is thought to be unjust or

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<sup>7/</sup> Since 1858 there have been more than 30 separate additions to or repeals of statutory powers of the treasurer. An outline of some of those enactments is contained in Addendum "C" hereto.

oppressive, or to violate some natural, social, or political rights of the citizens, unless it can be shown that such injustice is prohibited or such rights are protected by the constitution.

Except where the constitution has imposed limitations upon the legislative power, it must be considered as practically absolute; and to warrant the judiciary in declaring a statute invalid they must be able to point out some constitutional limitation which the act clearly transcends.

Id. (emphasis added).

In the instant matter there is not only an absence of any express constitutional restriction clearly transcended by Chapter 13, there are constitutional provisions in support of it. The presumption of constitutionality is too great for petitioner to overcome.<sup>8/</sup>

A. Chapter 13 Is A Constitutional Expression Of Legislative Powers.

An important factor underlying the presumption of constitutionality is the principle that, perhaps more than any other governmental body, the legislature directly represents the voice and will of the public. Consequently, the Constitution does not truly grant powers to the legislature; rather, it imposes restrictions on those powers of the governed which have already existed with the legislature. If an enactment is not in violation of a clear

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<sup>8/</sup> During the legislative hearings on the bill which became Chapter 13, the question of its legality was specifically raised and discussed. Hearing of State Departments Subcommittee of Senate Finance Committee, April 24, 1985 (tape sides 1, 1166-1312, and 2, 370-573). Thus, the presumption of constitutionality is buttressed by the assumption that the legislature would not intentionally act inconsistently with its constitutional powers.

constitutional restriction, it must be sustained. Williams v. Evans, 139 Minn. 32, 37-38, 165 N.W. 495 (1917); State ex rel. Simpson v. City of Mankato, 117 Minn. 458, 136 N.W. 264 (1912); State v. Corbett, 57 Minn. 345, 349-50, 59 N.W. 317, 318 (1894). Cf. State ex rel. Michaels v. Morse, 165 Ohio 599, 603-04, 138 N.E.2d 660, 664 (1956); Cort v. Smith, 249 App. Div. 1, 4, (N.Y. 4th Dept. 1936); People v. McCullough, 254 Ill. 9, 23, 98 N.E. 156, 159 (1912).

In the State ex rel. Simpson case the legislature had enacted a statute authorizing local units of government to frame their own charters. A quo warranto proceeding was brought challenging the constitutionality of the Mankato charter, because it allowed the mayor to be a member of the city council, allegedly in violation of the separation of powers doctrine. This Court rejected that claim and made the following comment:

We must not forget that the voice of the legislature is the voice of the sovereign people, and that, subject only to such limitations as the people have seen fit to incorporate in their Constitution, the legislature is vested with the sovereign power of the people themselves. In other words, the provisions of a state Constitution do not and cannot confer upon the legislature any powers whatever, but are mere limitations in the strict sense of that term, and the legislature has all the powers of an absolute sovereign of which it has not been divested by the Constitution.

117 Minn. 458, 463-64, 136 N.W. 264, 266 (1912) (emphasis added; citations omitted).

The Illinois Supreme Court, in a case relied on by petitioner, rendered a similar holding against claims comparable to those in the instant proceeding. In People v. McCullough, 254 Ill.

9, 98 N.E. 156 (1912), employees of the Illinois secretary of state argued that the legislature had unconstitutionally intruded on the powers of a constitutional executive officer by creating a civil service system with jurisdiction over such officer. The Illinois constitution contained a provision similar to Minn. Const. art. V, § 4, which stated that executive officers shall perform duties as may be prescribed by law. Id. at 14, 98 N.E. at 159. The court's holding is particularly relevant to the instant case:

The declaration that the officers of the executive department shall perform such duties as may be required by law was not intended to be a restriction on the legislature. On the contrary, it removed any restriction upon the power of the legislature to require of such officers in the performance of any duties that might be implied from the imposition of specific duties and left the whole question open to the legislature. The legislature could determine what duties each officer should perform in addition to those specifically mentioned in the constitution . . . .

Id. at 23, 98 N.E. at 161 (emphasis added).

Within the context here, one must conclude that there is not any specific constitutional restriction against Chapter 13. Petitioner is unable to identify a single constitutional provision which is a limitation on the sovereign power of the legislature to prescribe the treasurer's duties.

In fact, petitioner's argument ultimately would lead to absurd and unintended results. By challenging only some of the provisions of Chapter 13, he concedes that the legislature does have power to prescribe his duties. Yet, he also argues that there are undefined restrictions on such power. He implies, therefore, that the legislature is permitted to enact statutes giving duties to the

treasurer, but, once enacted, those statutes cannot be altered or repealed. That argument finds no support from any constitutional provision and is greatly at odds with the above-cited rulings of this Court and other courts regarding legislative power. See, e.g., State ex rel. Bergin v. Washburn, 224 Minn. 269, 273, 28 N.W.2d 652, 654 (1947) ("what the legislature has authority to enact it obviously has like authority to amend or even to repeal.")

Petitioner attempts to overcome that defect by asserting that there is a danger that the legislature would use its powers to impose unnatural or ludicrous duties on executive officers. He claims, for example, that the legislature might require the auditor to provide legal representation of the state. Petition at 8-9. That kind of contention is not only groundless, it is inconsistent with the deference this Court has long given to the other two branches of government. The presumption of a statute's constitutionality itself is based, in part, on the view that governmental agencies will ordinarily act rationally.

Chapter 13 does not represent irrational or unnatural legislative action. It does not require the treasurer to perform unaccustomed duties, and those statutory functions transferred to respondent logically relate to the responsibilities of the Department of Finance. Furthermore, a review of the historic legislative enactments pertaining to the treasurer (see Addendum "C") shows a rational relationship to financial management functions. Thus, petitioner's concerns are not well founded.

B. Chapter 13 Is Consonant With The Separation Of Powers Doctrine.

Petitioner contends that Chapter 13 violates Minn. Const. art. III, § 1, in that it allegedly is a legislative branch impingement upon the powers of the executive branch. Petition at 7-8, 11. Article III, § 1, provides:

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.

Chapter 13, however, clearly is not an attempt by one branch (the legislature) to exercise the powers of another (executive). Rather, it merely shifts existing functions of the executive branch internally within that same branch of government.

Petitioner is concerned that, if Chapter 13 is sustained, it would make it possible for the legislature to have unlimited powers over the executive branch. Petition at 9. There is no basis for concern. First, as noted above, the legislature already has all those sovereign powers not expressly prohibited by the Constitution. Certainly Minn. Const. art. III, § 1, is an express limitation on each branch of government, but Chapter 13 is not a legislative attempt to perform functions of any other branch. Second, Chapter 13 does not constitute an unlimited expression of the legislature's own powers under Minn. Const. art. V, § 4. As noted hereinafter, the treasurer still retains important statutory and constitutional functions pertaining to state financial supervision.

The only case relied on by petitioner for his separation-of-powers claim is inapposite. Petition at 9-10. In State ex rel. Young v. Brill, 100 Minn. 499, 111 N.W. 294 (1907), this Court struck down a statute which empowered Ramsey County judges to appoint members of the county board of control. Concluding that the board of control was an executive branch body, this Court ruled that allowing members of the judicial branch to control the board's make-up was violative of the separation-of-powers principle.

Certainly, there is no analogy between Chapter 13 and the legislation at issue in Brill. In cases factually more comparable to the instant matter, this Court and others have rejected separation-of-powers assertions. State ex rel. Simpson v. City of Mankato, 117 Minn. 458, 136 N.W. 264 (1912). See also Boner v. Jones, 60 Ill. 2d 532, 538, 328 N.E.2d 548 (1975), (upheld personnel code statute which governed employment status of employees of executive departments); People v. Brady, 262 Ill. 578 (1914) (upheld civil service law); People v. McCullough, 254 Ill. 9, 98 N.E. 156 (1912) (upheld validity of state civil service commission).

Since Chapter 13, therefore, does not give one branch of government the functions of another branch, it is in harmony with Minn. Const. art. III, § 1. Petitioner's separation-of-powers argument is untenable.

**III. THE TREASURER'S OFFICE, UNDER CHAPTER 13, RETAINS SIGNIFICANT GOVERNMENTAL FUNCTIONS RELATING TO STATE FINANCES AND HAS AN ADEQUATE BUDGET TO PERFORM THEM.**

**A. Petitioner Has Important Functions Unaffected By Chapter 13.**

Quite clearly Chapter 13 would be unconstitutional if it purported to abolish all of the treasurer's statutory and constitutional functions. See Johnson v. Commonwealth, 291 Ky. 829, 840-41, 165 S.W.2d 820, 828 (1942); Op. Atty. Gen. 24-a (March 4, 1955). That is not the case, however.

Following the enactment of Chapter 13, petitioner retained the following constitutional and statutory responsibilities:

1. He is a member of the State Board of Investment pursuant to Minn. Const. art. XI, § 8, and Minn. Stat. § 11A.03 (1984);
2. He is a member of the State Executive Council pursuant to Minn. Stat. § 9.11 (1984);
3. He is exclusively responsible for maintaining a separate record of the state bond fund under Minn. Const. art. XI, § 7; and
4. He must review the state's daily cash reconciliation reports from the Department of Finance pursuant to Minn. Stat. § 16A.27, subd. 1 (1984).

F.F. at 3, ¶ 4.



All of the above functions are significant and require discretionary actions. For example, he and four of the five other constitutional officers comprise the Board of Investment. That agency has the exclusive responsibility "of administering and directing the investment of all state funds." Minn. Const. art. XI, § 8 (emphasis added). See also Minn. Stat. § 11A.01 (1984) which requires such funds to be "responsibly invested to maximize the total rate of return without incurring undue risk." The Board of Investment is charged with major policy and financial management functions under Minn. Stat. § 11A.04 (1984). It can hardly be argued that the treasurer's role on the Board of Investment is unimportant and beneath the dignity of a constitutional officer. In fact, the Board is ultimately responsible for the daily investments of all state funds, decisions which involve millions of dollars. F.F. at 10, ¶ 19.

Likewise, as one of the six-member Executive Council (all members are constitutional officers), he shares ultimate responsibility for designating depositories of state funds following the competitive bidding process administered by respondent. Minn. Stat. § 9.031 (1984) and F.F. at 6-7, ¶ 8. The Council also has the authority to cancel or compromise state monetary claims. These functions clearly are important parts of overseeing the receipt, care and custody of state money. Furthermore, the Council has the following powers:

(a) take such measures as are necessary to prevent an impending disaster that threatens to destroy life or property;

(b) grant relief to communities stricken by disease, fire, action of the elements, or extreme economic distress;

(c) prevent the occurrence or spread of any disaster; and

(d) grant relief to individuals or families adversely affected by a major disaster in conformance with federal disaster relief laws and regulations. Any grants made shall be refunded to the state if the financial assistance needed is received from any other source.

Minn. Stat. § 9.061, subd. 1 (1984).

Petitioner's constitutional responsibility for maintaining state bond fund records is also an important financial management function. The treasurer is responsible, under Minn. Stat. § 11A.15, subds. 1 and 3 (1984), for managing that fund for the purpose of insuring timely debt service payments on state bonds. With approximately \$1.2 billion in state bond issues now outstanding, the debt service management surely is a major responsibility. F.F. at 11, ¶ 21. Since July 1, 1985, however, petitioner has chosen not to administer the debt service payments and has asked respondent to perform that function for him. Id. See also F.F., Ex. "F" (July 11, 1985, memo from respondent to petitioner responding to petitioner's request). It is odd that petitioner now claims that he was deprived of control over the disbursement of state funds.

Finally, Chapter 13 did not change petitioner's duty to monitor the state's daily cash reconciliation reports under Minn. Stat. § 16A.27, subd. 2. That is an extremely important function in

that it provides a check and balance as to respondent concerning the state of public funds in depositories. See Chapter 13 at § 13. Petitioner is required to review daily balances of state funds in certain accounts. Since Chapter 13 went into effect, respondent has been providing petitioner daily bank balance reports, daily cash account statements, daily State of Minnesota cash position reports and the daily invested treasurer's cash fund position. F.F. at 12, ¶ 24, and Exs. "G" through "J" thereto. In fact, respondent has offered regular monthly reports on all state warrants issued and redeemed, but petitioner has declined them. Id. A constitutional officer with the data provided by these reports and from his statutory review of daily cash transactions has considerable information he can use to the advantage of the public and his own policy objectives.

In light of the foregoing powers retained by petitioner, there can be no merit to his assertion that he has been stripped of all important treasury functions.

B. Petitioner's Staff and Budget Are Adequate.

Petitioner suggests that his office has essentially been abolished, because Chapter 13 unreasonably reduces his staff and budget. Petition at 3, 8, 16. It is ironic that, on the one hand, petitioner argues that Chapter 13 strips his office of all meaningful functions, yet he also claims his staff and budget are too small to carry out his duties.

In any event he has mischaracterized the effect on his budget and personnel complement. Since July 1, 1985, petitioner has employed an executive assistant principal, a fiscal activities officer and a half-time executive secretary. F.F. at 2, ¶ 3. Counting himself, petitioner now has a four-person office compared to a 17-person office before July 1, 1985. Id. at 1-2, ¶ 2. Although he claims that Chapter 13 deprives him of the authority to appoint a deputy treasurer and personal secretary (Petition at 3), he does indeed still retain that power under Minn. Stat. §§ 15A.081, subd. 6; and 43A.08, subd. 1 (Supp. 1985). Whether he chooses to designate the two persons in those positions with different titles is a discretionary decision by petitioner but not one mandated by the legislature.

In early 1985 petitioner requested of the legislature an appropriation of \$1,414,400 (\$713,200 for FY '86 and \$701,200 for FY '87). F.F. at 13, ¶ 26. Under Chapter 13 he received a two-year appropriation of \$330,800 (\$162,600 for FY '86; \$163,700 for FY '87; and \$4,500 as a 1986 salary supplement). Id. With respect to the nine personnel positions and functions transferred by Chapter 13 to respondent, the legislature appropriated \$759,300 (\$375,900 for FY '86; \$373,200 for FY '87; and \$10,200 as a salary supplement).

It is far too speculative for this Court or any other body to second-guess the amount of a legislative appropriation under these circumstances. Obviously, if the legislature had appropriated only one dollar or some other miniscule amount, petitioner might have a colorable claim (see Thompson v. Legislative Audit

Commission, 79 N. Mex. 693, 694, 448 P.2d 799, 800 (1969) (auditor's salary set at \$1.00 per year)). However, that is not the case here. It is implausible to conclude that \$330,800 is facially insufficient to operate a four-person office for two years, particularly when the head of that office claims he has been stripped of most of his responsibilities. Unquestionably the treasurer's biennial budget under Chapter 13 is significantly less than it had been the previous two-year period. As he asserts, however, his staff positions have been reduced from 20<sup>9/</sup> to four, a reduction of 80%. Yet, he asserts that his budget had been reduced by less than 75% by Chapter 13. Petition at 3. Thus, under his own formula, his current budget under Chapter 13 is proportionately greater than it had been in the preceding biennium.

The power of appropriation is quite clearly within the legislative province. Minn. Const. art. XI, § 1. The legislative power of the purse is well recognized and should not be altered by the courts unless there is a clear and blatant necessity. Compare United States Fire Insurance Co. v. Minnesota State Zoological Board, 307 N.W.2d 490 (Minn. 1981) and County of Beltrami v. Marshall, 271 Minn. 115, 135 N.W.2d 749 (1965). The facts here are too hypothetical to justify such interference.

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<sup>9/</sup> Petitioner had been authorized 20 staff positions before Chapter 13 was enacted. At that time, however, he had filled only 17 of those positions. F.F. at 1.

In fact, petitioner's own argument potentially would lead to a morass. By claiming that only some provisions of Chapter 13 exceed the legislature's powers and suggesting that there is a "line" over which it cannot step even under Minn. Const. art. V, § 4, he invites this Court to place a monetary value on his functions. He asks this Court to appropriate at least \$422,000 per year of the 1986-87 biennium to his office from the budget of respondent. There are at least two flaws with that request. First, it improperly assumes that the legislature would have appropriated that amount of money to the treasurer to perform the functions at issue here. Second, if granted, that request would result in respondent losing approximately \$94,800 more than it received from the legislature for the transferred functions.<sup>10/</sup>

Overall, the effect of Chapter 13 has been to leave the treasurer several important policy-making and financial management functions with a budget that is within the bounds of reason and legislative discretion.

**IV. CHAPTER 13 COMPLIES WITH THE CONSTITUTIONAL REQUIREMENT THAT A LEGISLATIVE BILL CONTAIN ONLY ONE SUBJECT EXPRESSED IN ITS TITLE.**

Petitioner's final argument against Chapter 13 is that it violates Minn. Const. art. IV, § 17, because it allegedly did not

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<sup>10/</sup> Respondent was appropriated \$375,900 for FY '86 and \$373,300 for FY '87 relative to the functions and positions transferred to his office by Chapter 13. F.F. at 13, ¶ 26. The following results accrue from petitioner's request:  $\$422,000 - \$375,900 = \$46,100$ ; and  $\$422,000 - \$373,300 = \$48,700$ ; and  $\$46,100 + \$48,700 = \$94,800$ . The latter figure is the amount respondent would lose, in addition to his current appropriation, under petitioner's theory.

refer only to one subject and there was no reference in its title to the treasurer. Petition at 17. Minn. Const. art. IV, § 17, provides that "[n]o law shall embrace more than one subject, which shall be expressed in its title."

As shown by the case law reviewed hereinbelow, the bill which became Chapter 13 fully complied with Section 17 requirements. Moreover petitioner's own memorandum implicitly concedes the weakness of his claim. He states that the "sole issue in this proceeding" is whether Chapter 13 is consistent with the "prescribed-by-law" provision of Minn. Const. art. V, § 4. Petition at 8. Furthermore, his one-page argument in support of the art. IV, § 17, claim does not rely on any case authority. Petition at 17. Thus, it is apparent that petitioner himself does not press this argument strenuously.

The decisions of this Court demonstrate why that is appropriate. Article IV, § 17, is intended to restrict "log-rolling" legislation and bills which deceive the affected persons and the public in general as to their contents. Wass v. Anderson, 312 Minn. 394, 397-98, 252 N.W.2d 131, 134-36 (1977); Thomas v. Housing and Redevelopment Authority of Duluth, 234 Minn. 221, 245-46, 48 N.W.2d 175, 190 (1951).

According to the early case of Board of Supervisors of Ramsey County v. Heenan, 2 Minn. 330 (1858), the intent behind art. IV, § 17, was to eliminate egregious abuses of the legislative process which totally misled both legislators and those in the public as to the contents of bills. In Johnson v. Harrison, 47

Minn. 575, 577-578, 50 N.W. 923, 924 (1891), this Court gave the following definition of the scope of art. IV, § 17:

This provision is to be given a liberal, not a strict, construction. The term "subject" . . . is to be given a broad and extended meaning . . . . All that is necessary is that the act should embrace some one general subject; . . . that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject. . . . The subject may be as comprehensive as the Legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several.

(Emphasis added.)

It is not required that the bill's title be an index to the entire contents, even though they may be varied. Western States Utilities Co. v. City of Waseca, 242 Minn. 302, 312, 65 N.W.2d 255, 265 (1954); C. Thomas Stores Sales System, Inc. v. Spaeth, 209 Minn. 504, 509, 297 N.W. 9, 13 (1941); Johnson v. Harrison, 47 Minn. 575, 577, 50 N.W. 923, 924 (1891).

In light of the foregoing standards, Chapter 13 passes constitutional muster. Its title identifies every statutory section amended and repealed and expressly states that it relates to "the organization and operation of state government . . . creating, modifying, transferring, and abolishing agencies and functions." Indeed, petitioner's primary objection to Chapter 13 is that it does exactly what its title suggests -- it repeals certain of the treasurer's statutory functions and modifies and transfers others. Certainly there is no doubt that the treasurer's office is an agency of state government and its organization and operation are affected by Chapter 13.



It is also notable that the petition herein does not contest the actual transfer language of Section 13 of Chapter 13; it attacks only some of the amendatory and repealer provisions of the act. Since the title of Chapter 13 specifically refers to each statute amended or repealed, it satisfies the requirements of art. IV, § 17. State ex rel. Olson v. Erickson, 125 Minn. 238, 245, 146 N.W. 364, 366-67 (1914).

Finally, the legislative debates on Chapter 13 reflect that the Senate and House State Department Committee members, as well as petitioner himself, were fully aware that the bill contained many provisions affecting the treasurer's office. Hearings of State Departments Subcommittee of Senate Finance Committee, Feb. 19, 1985 (tape side 2, 874-1058); April 24, 1985 (tape side 2, 370-573); and Hearings of Senate and House State Departments Conference Committee, May 14, 1985 (tape side 2, 1557-1599). Thus, it cannot be claimed that persons interested in the subject had been misled. In summary, the title of Chapter 13 refers to a broad reorganization of state government that includes matters germane to the treasurer's office. It satisfies the standards of article IV, § 17.

**CONCLUSION**

For all of the foregoing reasons, the petition herein should be denied and Chapter 13 sustained in all respects.

Dated: April 11, 1986

Respectfully submitted,

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A D D E N D A

## ADDENDUM "A"

The following is a list of those sections of 1985 Minn. Laws Ch. 13 (Spec. Sess.) which amend or repeal statutes pertaining to the Minnesota State Treasurer's Office but are not challenged by petitioner in this proceeding. Section numbers not otherwise identified, refer to sections of 1985 Minn. Laws Ch. 13 (Spec. Sess.).

### I. AMENDATORY SECTIONS.

1. Section 77 amends Minn. Stat. § 11A.20, subd. 1, by eliminating the role of the treasurer in certifying to the State Board of Investment the amount of state funds not currently needed and, therefore, available for investment.
2. Section 105 amends Minn. Stat. § 16A.40 by restating that money must not be paid out of the state treasury except upon the warrant of the commissioner of finance. (This is a restatement of language formerly contained in Minn. Stat. § 7.03, which was repealed.)
3. Section 106 amends Minn. Stat. § 16A.42, subd. 2, by eliminating the requirement that the state treasurer sign state warrants. (Previously, state warrants had been signed by the treasurer and the commissioner of finance through the use of facsimile signature stamping machine.)
4. Section 108 amends Minn. Stat. § 16A.47 by abolishing the requirement that the commissioner of finance keep an account with the treasurer showing money paid into and out of the treasury. (Compare the commissioner's pre-existing functions under Minn. Stat. § 16A.055, subd. 1(3) (1984).)
5. Section 109 amends Minn. Stat. § 16A.58 by stating that the commissioner of finance is the custodian of original documents on which money has been or may be paid "out of the state treasury" instead of "by the treasurer."
6. Section 113 amends Minn. Stat. § 16A.672, subd. 1, by eliminating the treasurer's role in issuing, executing, delivering, signing and paying bonds and certificates of indebtedness. The commissioner of finance retains his pre-existing function under that statute.

7. Section 114 amends Minn. Stat. § 16A.672, subd. 2, by eliminating the treasurer's role with respect to the issuance of bonds and certificates.
8. Section 115 amends Minn. Stat. § 16A.672, subd. 3, by eliminating the need for a facsimile signature by the treasurer on bonds and certificates.
9. Section 357 amends Minn. Stat. § 473.606, subd. 1, by deleting the requirement that the treasurer serve as the ex officio treasurer of the Metropolitan Airports Commission.

## II. REPEALER SECTIONS

(All repealed statutes are identified in section 376. Of the 30 repealers pertaining to the treasurer's statutory functions, 15 are not challenged in the instant proceeding.)

1. Minn. Stat. § 7.05 pertaining to the treasurer's making daily and annual statements of receipts and disbursements and fund balances. (Compare the pre-existing accounting and reporting functions of the commissioner of finance under Minn. Stat. §§ 16A.50 and 16A.055. See also F.F. at 5-6, ¶ 6, concerning the state-wide accounting system.)
2. Minn. Stat. § 10.18 regarding the procedures for converting state bonds or certificates of indebtedness sold in registered form. (Compare the pre-existing procedures regarding this function in Minn. Stat. § 16A.672 (1984).)
3. Minn. Stat. § 10.19 regarding the same subject referred to in Minn. Stat. § 10.18.
4. Minn. Stat. § 10.20 regarding the same subject referred to in Minn. Stat. § 10.18.
5. Minn. Stat. § 10.21 regarding the same subject referred to in Minn. Stat. § 10.18.
6. Minn. Stat. § 10.22 regarding the same subject referred to in Minn. Stat. § 10.18.
7. Minn. Stat. § 10.23 regarding the same subject referred to in Minn. Stat. § 10.18.
8. Minn. Stat. § 46.15 relating to the deposit of certain securities by trust companies with the treasurer.

9. Minn. Stat. § 48.87 pertaining to the same subject referred to in Minn. Stat. § 46.15. (When enacted in 1905, Minn. Stat. § 48.87 transferred custody of the securities to the commissioner of banks. In 1923 Minn. Stat. § 46.15 was enacted to transfer custody of the securities back to the treasurer.)
10. Minn. Stat. § 124.471 pertaining to the treasurer's role with respect to the issuance and expenditure of maximum effort school loan bonds in 1963.
11. Minn. Stat. § 360.301 pertaining to the issuance of aeronautics bonds. (See F.F. at 10, ¶ 18.)
12. Minn. Stat. § 360.304 " " " ".
13. Minn. Stat. § 360.388 " " " ".
14. Minn. Stat. § 360.389 " " " ".

## ADDENDUM "B"

This addendum contains the language of 1858 Minn. Gen. Laws Ch. 59, pertaining to the duties of the treasurer at that time.

Section 1. That the qualified voters of the State shall elect a Treasurer of State every two years, who shall continue in office until his successor is duly elected and qualified; and he shall receive an annual salary of one thousand dollars per annum payable quarterly.

Sec. 2. The Treasurer of State shall keep his office at the capital of the State; shall have charge of, and safely keep all public moneys which shall be paid into the treasury, and pay out the same as directed by law, and perform all such other duties as now are or shall hereafter be required of him by the laws of this State.

Sec. 3. The present Treasurer shall at once give bond, with five or more securities to be approved by the Governor in the sum of one hundred thousand dollars, payable to the State of Minnesota, and conditioned for the faithful discharge of his duties as Treasurer, and shall take and subscribe an oath, or affirmation, faithfully to discharge the duties of his office: which bond, and oath or affirmation, shall be deposited with the Secretary of State.

Sec. 4. The successors in office of the first Treasurer of State shall, before entering upon their duties, give bond and do every other acts as provided for in the preceding section.

Sec. 5. The Legislature may, at any time during the continuance in office of the Treasurer, require him to give such additional security as they shall deem necessary for the complete security of the State.

Sec. 6. The Treasurer shall keep an accurate account of the receipts and disbursements at the treasury, in books provided for that purpose at the expense of the State, in which he shall specify the names of persons from whom received, or to whom paid, on what account the same is received, or to whom paid, on what account the same is received or paid out, and the time of such receipt or payment.

Sec. 7. The Treasurer shall receive in payment of public dues the bills drawn by the Auditor of the State, in conformity with the laws of the State, or redeem the same, if there be money in the treasury appropriated for that purpose, and on redeeming such bill, or receiving the same in payment he shall cause the person presenting such bill to endorse the same; and the Treasurer shall write on the face of such bill, "Redeemed," and shall enter in his book, in separate columns, the number of such bill, its date, amount of the name of the person to whom payable, the date of payment, and the amount of interest, if any, paid thereon.

Sec. 8. That when any bill shall be presented to the treasury for redemption, and there shall be no funds therein appropriated for that purpose, the Treasurer of State shall endorse thereon the date of its presentation, with his signature thereto, and whenever there shall be funds in the treasury for the redemption of bills so presented and endorsed, the Treasurer shall give notice of the fact in some newspaper published at the seat of government, and at the expiration of thirty days after the date of such notice, the interest on such bill shall cease.

Sec. 9. The Treasurer shall, on the first Monday of March, June, September and November, annually, deposit in the office of the Auditor of State, all bills by him redeemed or received in payment at the treasury, and take the Auditor's receipt therefor.

Sec. 10. The Treasurer shall annually report to each branch of the Legislature on the third day of their session, and to the Governor whenever by him required, the state of the public accounts, and the funds, exhibiting the amount by him received, the amount paid out during the preceding year, and the balance remaining in the treasury.

Sec. 11. The Treasurer shall, as often as required, submit his books, accounts vouchers, and the funds in the treasury, to the inspection of the Legislature or any committee thereof appointed for that purpose.

Sec. 12. The Treasurer shall in no case purchase or receive any bill redeemable at the treasury, or any audited account, at a less value than is expressed therein, nor shall he receive any fee or reward for transacting any business connected with the duties of his office.



Sec. 13. If the person elected Treasurer shall fail to give bond and security as provided in this Act, the Governor shall appoint some person in his place, who shall give bond and security, as before provided in this Act, and said person so appointed shall hold his office until the next meeting of the Legislature, or until his successor is duly elected and qualified.

Sec. 14. The Treasurer shall attend at his office between the hours of nine and twelve, and between two and five o'clock, every day in the year, (Sundays, the Fourth of July, Thanksgiving Day and Christmas excepted), and the 22d of February, also the first of January.

Sec. 15. If, in any instance, the Treasurer shall neglect to call to account, as directed by law, any delinquents, whereby the public revenue may suffer loss, he shall be held and deemed accountable for the sums due by such delinquents, to all intents and purposes, as if the same had actually been paid into his office.

Sec. 16. If at any time it shall appear from the accounts of the Treasurer the Auditor, or in any other way, that the Treasurer has not accounted for and paid over the public moneys of the State as directed by law, the State may move for and obtain judgment against the Treasurer and his sureties, in any Court of record, first giving to the persons against whom such motion shall be made, five days notice of the time and place, when and where such motion will be made, and said Treasurer shall be liable to a criminal action, and upon conviction shall be punished by imprisonment at hard labor for a term not less than five nor more than twenty years.

Sec. 17. If any Treasurer, or other person indebted to the State, shall become insolvent, the debt of the State shall be paid first of all debts, notwithstanding any attachment against his effects, or any voluntary assignment thereof to pay debts, or for other purposes.

Sec. 18. The Treasurer shall procure a seal of office with such devices thereon as the Treasurer and Governor deem most suitable.

Sec. 19. All moneys that may be due the Treasury, and which shall be paid to the Treasurer on that account, shall be either gold or silver, or current bank notes of the Banks of the State of Minnesota.

## ADDENDUM "C"

The following is an outline of 31 different legislative enactments relating to the Minnesota treasurer's functions since 1858:

- Laws 1858, ch. 59 - provided for the election and prescribed duties of state treasurer.
- Laws 1874, ch. 11 - created a board of auditors of the state treasury, consisting of the governor, secretary of state and the attorney general. Duties of the board included examination and auditing of accounts, books and vouchers of the treasurer, and counting and ascertaining the kinds and description and amounts of funds in the treasury. This was to be done four times each year without prior notice to the treasurer. This act also provided for the depositing of funds in a bank to be selected by the treasurer.
- Laws 1895, ch. 224 - authorized the treasurer to collect tax on steam vessels, barges, boats or other watercraft. Half the taxes collected were to be paid by the treasurer to the treasury of the county from which the vessel hailed.
- Laws 1899, ch. 298 - authorized the treasurer to appoint a deputy.
- Laws 1901, ch. 140 - created a board of deposit to designate banks for deposit.
- Laws 1902, ch. 91 - authorized the treasurer to employ stenographer.
- Laws 1905, ch. 288, § 5 - made the inheritance tax payable to the treasurer.
- Laws 1909, ch. 478 - transferred all securities deposited with the treasurer pursuant to laws governing deposits of foreign insurance companies to the commissioner of insurance.
- Laws 1913, ch. 584, § 16 - authorized the treasurer to, on a temporary basis, borrow from other public funds when deficiencies existed in the general revenue fund.
- Laws 1913, ch. 587 - a proposed constitutional amendment to repeal the requirements that the treasurer on an annual basis publish a report of receipts, disbursements, and other matters dealing with the state of the treasury.

- Laws 1917, ch. 7 - authorized the treasurer to receive payments of principal on sales of school or other lands.
- Laws 1919, ch. 435, § 2 - amended the general statutes, 1913, § 82, eliminating the requirement of publication of reports in the newspaper. (See Laws 1913, ch. 587).
- Laws 1919, ch. 441 - established the state printing commission of which the treasurer was a member.
- Laws 1923, ch. 155 - assigned to the treasurer securities formerly held by the superintendent of banks.
- Laws 1925, ch. 426 - created the executive council, which replaced the board of deposit.
- Laws 1925, ch. 297 - made the gasoline tax payable to the treasurer.
- Laws 1927, ch. 593 - removed the collection of the gas tax from the treasurer's office to the state's chief oil inspector (commissioner of dairy and food).
- Laws 1929, ch. 191, § 2 - created the state employee's retirement association; the board of managers consisted of the state auditor, the treasurer, the insurance commissioner and four state employees. Section 5 of this law also made the state treasurer the treasurer of this association.
- Laws 1929, ch. 291 - made the state treasurer the repository for cigarette license fees collected by the dairy and food commissioner; 90% of those funds went back to the locale where they had been collected, 10% went to the general revenue fund.
- Laws 1935, ch. 19 - created the treasurer's revolving fund (\$20,000) for the convenience of cashing checks, drafts, warrants; the fund's account was to be cleared on a daily basis.
- Laws 1935, extra session, ch. 70 - made the treasurer the custodian of federal monies received by the state for maternal and child welfare service, and for public health services. Expenditures were to be made per plans drawn up by federal and state agencies related to those funds.
- Laws 1943, ch. 591 - authorized the deposit of assets by investment companies with the treasurer as security for payment of certain certificate obligations.

- Laws 1943, ch. 593 - transferred the collection of the inheritance tax from the treasurer's office to the commissioner of taxation.
- Laws 1945, ch. 285 - established the safety responsibility act in which persons could deposit cash (\$11,000) with the state treasurer as evidence of financial responsibility. The treasurer would issue a certificate attesting to the financial responsibility of the individual (this was in lieu of automobile liability insurance). Subdivision 2 of this law authorized the treasurer to hold the money to satisfy judgments for damages based on personal injury, death or property damage.
- Laws 1953, ch. 492 - new executive council statutes; the treasurer was no longer liable for safekeeping of funds lawfully deposited.
- Laws 1969, ch. 373 - established the tax forfeited land insurance account. The treasurer, upon order of the district court, would pay claims based on wrongful deprivation of land or interest due to actions or omissions of any public employee performing duties under laws relating to forfeiture of lands for taxes. The treasurer could be named as a defendant in actions to recover loss or damage.
- Laws 1969, ch. 1153, § 10 - authorized the treasurer to set aside vessel tonnage tax and to distribute said taxes to counties entitled thereto at the end of each fiscal year. (This was a modernization and upgrading of Laws 1895, ch. 224, supra.)
- Laws 1973, ch. 492 - created the department of finance. Included in this law is the requirement that the treasurer make daily reports to the commissioner of finance. (This legislation took several functions away from the state auditor.)
- Laws 1974, ch. 445 - transferred the duties of the treasurer regarding retirement funds (recording contributions) to the executive director of the Minnesota retirement system, which was created in 1974. (This act also transferred certain duties from the state auditor.)
- Laws 1981, 3 Sp. ch. 2, art. 7, § 7 - repealed the authority of the state treasurer to borrow from the state building fund.
- Laws 1981, 3 Sp. 2, art. 1, § 2 - transferred unclaimed property functions from the treasurer to the commissioner of insurance (later the commissioner of commerce).