

FILED
Court Administrator

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

JUL - 8 2011
By CW Deputy

SECOND JUDICIAL DISTRICT

In re Government Shutdown Litigation,

Case Type: Civil
Court File No. 62-CV-11-5203

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

**ORDER REGARDING PETITIONS OF
LEONA JOVONOVICH, STORE TO
DOOR, MINNESOTA AUTOMOBILE
DEALERS ASSOCIATION, THE CITY
OF MINNETONKA BEACH, AND THE
MINNESOTA ASSOCIATION OF
COMMUNITY REHABILITATION
ORGANIZATIONS**

On June 23, 2011, the undersigned heard oral argument pursuant to the Motion of Petitioner Lori Swanson, Attorney General for the State of Minnesota, for temporary funding of the executive branch. On June 29, 2011, the Court issued its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 29, 2011, the Court appointed retired Minnesota Supreme Court Chief Justice Kathleen Blatz as Special Master to hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On July 5 and July 7, 2011, Special Master Blatz conducted evidentiary hearings regarding Petitioners seeking state funding as providers of critical core functions of government.

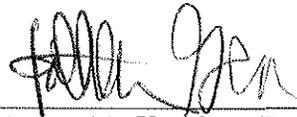
The Court accepts and adopts the attached findings of the Special Master subject to modification pursuant to Minn. R. Civ. P. 53.07(b) with respect to the requests of government offices and petitions brought by programs (hereinafter listed). Based on the file, proceedings, and recommendations, the Court makes the following ORDER:

1. The petition filed by Leona Jovonovich is denied.
2. The petition filed by Store to Door is granted.
3. The petition filed by the Minnesota Automobile Dealers Association is denied.
4. The petition of the City of Minnetonka Beach is denied.
5. The petition of the Minnesota Association of Community Rehabilitation Organizations is denied.
6. The attached memorandum is incorporated into this order.

Dated:

7-11-11

BY THE COURT:



The Honorable Kathleen R. Gearin
Chief Judge
Ramsey County District Court

Memorandum

Providing employment assistance for severely disabled adults is an admirable goal of government. It is not a critical core function. Losing employment because of the legislative and executive branches' failure to resolve budget issues is affecting the financial security and self-esteem of more than 22,000 state employees and thousands of private employees involved in state projects requiring either state funding or state contracts. The denial of this petition will have this effect on a particularly needy population. It is a difficult decision. Not every admirable social program is so essential that it reaches the level required to overcome the requirements of the Minnesota Constitution.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF LEONA JOVONOVICH**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 7, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General for the State of Minnesota; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Leona Jovonovich appeared on her own behalf.

Based upon the arguments of counsel at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request that the Court authorize the Minnesota Board of Nursing to grant and approve new nursing licenses should be **DENIED**.

Concerns of Petitioner

1. Petitioner seeks an order from the Court compelling the Minnesota Board of Nursing to approve nursing licenses during the pendency of the government shutdown so that Petitioner and similarly-situated individuals may begin employment in the medical field without delay.

Analysis

1. Ms. Jovonovich graduated from the University of Minnesota in May 2011 and took her nursing board exams on July 7, 2011. Ms. Jovonovich received a job offer to begin working in the Pediatric ICU department at Amplatz Children's Hospital on July 25, 2011. As a result of the government shutdown, the Nursing Board is not currently accepting applications for licensure or accepting any test results from the nurse license testing service. Petitioner testified that she will not be able to begin employment on July 25, 2011 without her nursing license. Consequently, Petitioner seeks an order compelling the Minnesota Board of Nursing to grant new nursing licenses during the government shutdown.

2. Attached to the Court's Order in Exhibit A is a list of agencies recommended to close during the government shutdown. The Nursing Board was included on this list.

3. The Special Master is instructed by the Court's Order, which acknowledges that many "will be significantly and adversely impacted by the failure of the executive and legislative branches to successfully enact laws and appropriating funds" including, among other things, helping individuals "obtain and maintain employment." (Order p. 10 ¶ 30.) Based upon a clear reading of the Court's Order, the Special Master does not find that licensing constitutes a critical core function of government at this time. Accordingly, the Special Master recommends that the Court deny the request.¹

Dated: July 8, 2011



The Honorable Kathleen A. Blatz
Special Master

¹ The Attorney General's Office presented a due process of law argument under the federal and state constitutions in further support of Ms. Jovonovich's petition. Such arguments are better directed to the Court for clarification or determination.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**SPECIAL MASTER
RECOMMENDATIONS ON PETITION
OF STORE TO DOOR**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 5, 2011. Present before the Special Master were Lori Swanson, Attorney General; Alan Gilbert, Solicitor General and Deputy Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; and Mary Jo Schifsky, Executive Director of Petitioner Store to Door.

Based upon the testimony at the hearing, the Special Master makes the following:

Recommendation

1. The Special Master recommends that the Court **CLARIFY** its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding of June 29, 2011 (the "Order") provide for the continued funding of the State Nutrition Support Service fund and the State Nutrition Expansion Fund.

Concerns of Petitioner

1. Petitioner requests the continued funding of the State Nutrition Support Service fund and the State Nutrition Expansion in order to allow Petitioner to continue to provide food to homebound elderly within the seven-county metro area. Such delivery of food to homebound elderly is, in the Petitioner's view, a critical core function of government.

Analysis

1. Petitioner helps homebound elderly Minnesotans in the seven-county metro by fulfilling their grocery orders to ensure that they retain access to necessary groceries, which allows them to continue living independently.

2. The Special Master heard testimony that Petitioner's services are essential to homebound elderly Minnesotans. More than a third of the people served by Petitioner are over the age of 85 and 70% of the clients live below the federal poverty guidelines.

3. The State Nutritional Support grant and the State Nutrition Expansion Fund are funded by the Minnesota Board on Aging.

4. The Special Master heard evidence that the individuals served by Petitioner's program are truly homebound and dependent on Petitioner's bi-weekly grocery delivery. If the grants that comprise the bulk of Petitioner's funding are not funded, the recipients of Petitioner's services are at high risk of not getting enough to eat because their mobility issues prevent them from accessing grocery stores or food-shelf services

5. The Special Master recommends that the Court clarify that continued funding of the State Nutritional Support grant and the State Nutrition Expansion Fund is a critical core function of government as a "matter[] relating to the life, health and safety of Minnesota citizens." (Order p. 15 ¶ 4.) This clarification is congruent with the Court's Order to continue funding of other types of food assistance. (*Id.* Ex. A, "Human Services".)

Dated: July 8, 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF MINNESOTA
AUTOMOBILE DEALERS
ASSOCIATION**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 5, 2011. Present before the Special Master were Lori Swanson, Attorney General; Alan Gilbert, Solicitor General and Deputy Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor. Attorney Tom Hanson and Jim Schutjer, General Counsel, appeared on behalf of Petitioner Minnesota Automobile Dealers Association.

Based upon the arguments of counsel at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request that the Court's June 29, 2011 Order be amended to provide sufficient ongoing funding to allow automobile dealers continued online electronic access to Minnesota Department of Public Safety's Driver and Vehicle Services ("DVS") mainframe and motor-vehicle systems during the shutdown should be **DENIED**. Similarly, the Special Master recommends that the Petitioner's separate request to allow continued electronic updating of vehicle sales and registration information to DVS through the Computer Vehicle Registration ("CVR") system be **DENIED**.

Concerns of Petitioner

1. Petitioner seeks an amendment to the Order directing DVS to continue online electronic access to its records through access to the DVS mainframe, and also to continue to allow dealers to update DVS records through the CVR system during the ongoing government shutdown.

Analysis

1. The CVR is a web-based system, which allows licensed Minnesota motor vehicle dealerships to electronically transfer title and registration information to a DVS approved Deputy Registrar. Participation in the CVR program allows a licensed automobile dealer to issue indicia of legal registration to vehicle purchasers on-site at the dealership.

2. A private company, CVR, Inc. owns and operates the CVR software. Dealers pay this private company, and not DVS, to use the CVR software. The CVR software interfaces with the DVS records to update title and registration information.

3. The Special Master heard testimony that approximately one-third of the motor vehicle dealers in the state use the CVR system. The balance of the dealers do not use CVR and, instead, update title and registration system with the Deputy Registrar. Title and registration updating through the Deputy Registrar is continuing during the shutdown. Use of the CVR system is not mandated by state law.

4. Petitioner argues that continued online access to DVS records by the CVR system should be ordered during the ongoing government shutdown in order to ensure public safety and as an aid to law enforcement because use of the system prevents delay and ensures that DVS's records are as accurate and updated in a timely manner. While the CVR system provides a beneficial service to the dealers and to the State, the Special Master recommends denial of the

petition because the timely updating of the DVS's records through the CVR system is not a critical core function of government essential to the maintenance of public safety sufficient to require continued funding under the Order.

5. Petitioner also seeks continued dealer access to the DVS mainframe and Esupport systems during the shutdown so that dealers may view customer records to verify ownership and lienholder status. The Special Master heard evidence that dealers can still obtain this information during the shutdown by contacting a Deputy Registrar and therefore recommends denial of the petition on the basis that this particular electronic access is not a critical core function of government that requires continued funding during the shutdown.

6. The Court specifically found in the Order that "delay . . . and increased costs that will likely happen as a result of a government shutdown will be because of the executive and legislative branches failing to resolve the budget issues. Those things do not justify the Court in ordering the funding of non-critical core functions and thereby violating Article XI of the Minnesota Constitution." (Order p. 13 ¶ 37.)

Dated: July 8, 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF THE CITY OF
MINNETONKA BEACH**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 7, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General for the State of Minnesota; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Mayor Joann D. Anderson appeared for and on behalf of Petitioner City of Minnetonka Beach.

Based upon the arguments of counsel at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request that the Court authorize the Minnesota Department of Health ("Department") to review plans and specifications for Water Main Improvements in Minnetonka Beach should be **DENIED**.

Concerns of Petitioner

1. Petitioner seeks review and approval from the Department for plans and specifications relating to water main improvements in the east and central areas of Minnetonka Beach. The Department has halted such reviews as a result of the government shutdown. While

the City will open bids on July 18, 2011, it cannot begin construction on the project until the plans have been reviewed and approved by the Department.

Analysis

1. In April 2011, Minnetonka Beach voters approved a referendum authorizing the City to issue general obligation bonds for water main improvements. The plans are currently complete and construction is scheduled to begin on August 1, 2011, with a proposed completion date of October 1, 2011. The City's engineer submitted a Health Department permit application and plan review request on June 27, 2011. On June 30, 2011, Petitioner received notice from the Minnesota Department of Health that the plan review process would be delayed as a result of the government shutdown. The letter further advised the City that construction on the water main could not proceed until the City received notice of plan approval.

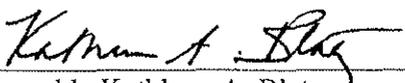
2. Petitioner argues that any delay in the project constitutes an imminent danger to the public and to the City's residents. Specifically, Petitioner noted that some of the City's water mains are unsuitable for fighting fires, homeowners are in danger of losing their homes due to insufficient water supply, and that with the City's current water main system, Lake Minnetonka is vulnerable to pollution. The water main has had at least two broken pipes this summer, including most recently on July 4, 2011.

3. Petitioner is concerned that the lack of a final review by the Department of Health will prevent the project from starting, as planned, on August 1, 2011 and ending by October 1, 2011. The Special Master heard testimony that if the project is not timely commenced, it will need to be postponed until the following spring because improvements cannot be made in inclement weather. Finally, Petitioner testified that the current plans to update the City's water main

system have been in the process for at least two years because the steps to move it forward have been time-consuming, including such steps as obtaining public support for a bond issue.

4. While the Special Master agrees that the project addresses public safety concerns, the recommendation is that the Court deny the petition at this time. The City has provided evidence that the water main must be improved, but given that the need has existed for several years, a several weeks delay should not exacerbate the pending harm or prevent the project from going forward this summer. If the shutdown continues beyond August 1, 2011, this Petitioner may request that the matter be revisited.

Dated: July 8, 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA

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COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

**SPECIAL MASTER
RECOMMENDATIONS ON PETITION
OF THE MINNESOTA ASSOCIATION
OF COMMUNITY REHABILITATION
ORGANIZATIONS**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 5, 2011. Present before the Special Master were Lori Swanson, Attorney General; Alan Gilbert, Solicitor General and Deputy Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; Tom Johnson, counsel for Petitioner, and Brian Benshoff, Executive Director of MRCI, a member organization of Petitioner.

Based upon the testimony at the hearing, the Special Master makes the following:

Recommendation

1. The Court should **CLARIFY** that the Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding of June 29, 2011 (the "Order") provide for the continued funding of the Minnesota Extended Employment ("EE") program because employment support to workers with severe disabilities is a critical core function of government ensuring that vulnerable populations within Minnesota may maintain employment.

Concerns of Petitioner

1. Petitioner requests the continued funding of the EE program, which aids more than 5000 severely disabled Minnesotans.

Analysis

1. Petitioner's member organizations provide employment support services to severely disabled workers through the EE program operated under the Minnesota Department of Employment and Economic Development.

2. The EE program is funded through a combination of state funds and funds raised privately by EE providers. There is no federal funding. Without continued state funding, the EE program cannot continue to operate.

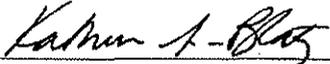
3. The EE program is not presently being funded. Accordingly, Petitioner's member organizations have begun laying off employees who provide ongoing employment support services to severely disabled workers. These employees provided support to disabled workers to ensure their success on the job. Evidence was received that some businesses have already begun furloughing the disabled workers who are no longer receiving services under the EE program due to the shutdown.

4. Only a small subset of Minnesota employers employ individuals with severe disabilities. If the shutdown continues to prevent funding of the EE program, the companies who provide employment to the severely disabled individuals serviced by the program will likely have to hire replacement workers and thereby eliminate employment positions for severely disabled individuals.

5. In Finding of Fact 28 of the Order, the Court agreed with the Office of the Governor that in "continuing funding for core functions of the government [it] should focus on the critical services discussed in Exhibit A." (Order p. 9 ¶ 28.) Exhibit A classifies Priority 2 Critical Services as including those services that, if interrupted, would have "a severe and permanent negative financial impact to business or vulnerable populations or groups of

individuals within Minnesota.” (Order Ex. A III.B.2.2.) It is the Special Master’s recommendation that the Court clarify that its Order continue funding for the Minnesota Extended Employment Program serving severely disabled individuals.

Dated: July 8, 2011



The Honorable Kathleen A. Blatz
Special Master