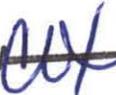


STATE OF MINNESOTA
COUNTY OF RAMSEY

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DISTRICT COURT
SECOND JUDICIAL DISTRICT
CASE TYPE: CIVIL

Court File No. 62-CV-11-5203

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

**AMICUS CURIAE MEMORANDUM
OF MINNESOTA SCHOOL
BOARDS ASSOCIATION**

INTRODUCTION

School districts in Minnesota are constitutionally and statutorily required to perform certain core functions on behalf of the State and federal governments. Among these is the constitutional obligation of the State to provide education as part of a general and uniform system of public schools.” See Minn. Const., art. XIII, sec. 1. School districts carry out these functions with the assistance of State and federal aid. School districts will be unable to carry out these core functions without the State continuing to make timely payments of State aids and disbursements of federal aids. In 2001 and 2005, when faced with similar State shutdowns, the Court ordered the continuing payment of major State and federal education aids. A failure to continue this funding to provide these core educational services will have severe adverse consequences for the school districts of the State of Minnesota and its citizens.

PROCEDURAL BACKGROUND

On June 13, 2011, the Attorney General of the State of Minnesota filed a Petition with this Court requesting the Court to order continued funding of certain core functions of government. This Petition is very similar in nature to the Petitions filed by the Attorney General

in 2001 and 2005 when the State was facing similar budget issues, and the Omnibus Education Funding Bill, among others, had either been vetoed or had not been signed into law.

In her Petition, the Attorney General clearly states that school districts of the State of Minnesota are charged under State and federal law to perform certain core functions on behalf of the State and federal governments. The school districts receive funds from the State and federal governments to perform these core functions. As further referenced in that Petition, in 2001 and 2005 core State functions were determined by the Court to include the State's education system and payment of State and federal education aids was authorized by the orders of the Court.

ARGUMENT

I. SCHOOL DISTRICTS PERFORM CORE FUNCTIONS ON BEHALF OF THE STATE AND FEDERAL GOVERNMENTS.

This Court previously determined in 2001 and 2005 that school districts perform core functions on behalf of the State and federal governments. In this regard, in 2001, the Court ordered the State and local agencies, including school districts, to continue to perform core functions required by the Minnesota Constitution and by State and federal law and ordered that the State continue to pay for such functions performed after July 1, 2001. *See In Re Temporary Funding of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. Dist. Ct., filed June 29, 2001).

Additionally, in 2005, the Court held that the executive branch was obligated to continue its core functions during a budgetary impasse and the State was required to pay for the functions

performed by the State and school districts. *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court File No. C0-05-5928 (Dist. Ct., June 23, 2005.) In Conclusion of Law No. 7 therein, the Court stated:

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

Consequently, in both cases the Court found that school districts performed core functions and ordered the payment of the major State and federal education aids. The Constitution has not been changed to affect these rulings since they were issued and the Courts have not issued case law to the contrary.

The Attorney General’s Petition filed in this case sets forth the factual and procedural background of this matter. See Paragraphs 13-23 of Petition. Particularly, in Paragraph 17 and in the Exhibits, the Attorney General cites to the rulings of this Court in 2001 and 2005 granting the motions for temporary funding, including the payment of State and federal education aids to school districts.

In Paragraph 20 of her Petition, the Attorney General cites to the provision of the Minnesota Constitution that provides for a general “uniform system of public schools.” Minn.

Const., art. XIII, sec. 1. This provision requires that the State mandate and finance a secure and efficient system of education that is uniformly available to all students.

In 2001 and 2005, the Court preserved the operation of the core functions of the executive branch of government and enforced the provisions of Article XIII, Section 1 of the Constitution. The Attorney General seeks the same relief in her June 13, 2011 Petition, and the Minnesota School Boards Association supports that Petition. A failure to approve the expenditure of funds to provide these core services will have severe adverse consequences for the school districts of the State of Minnesota and its citizens who are served by these districts or who benefit from a well-educated populace. Therefore, the Attorney General's Petition should be granted consistent with previous orders concluding that public education is a core function of government and ordering the payment of State and federal aids to school districts.

II. THE PAYMENT OF SPECIAL EDUCATION AND SPECIAL EDUCATION EXCESS COST AID SHOULD ALSO BE ORDERED.

The Minnesota School Boards Association also requests that the Court order the payment of special education and special education excess cost aid. These aids, in addition to various others, were approved by the Court for payment in 2005.

Under both State and federal law, school districts are required to provide special education services to a child with a disability from birth to age 21 at any time that school is in session and in compliance with the child's Individual Education Plan. If the school district is open and providing education, it must provide these services, whether or not there are funds appropriated to pay them. For this reason, the Legislature has adopted a level of funding for special education aid. See Minn. Stat. §125A.76, Subd. 4 (a level of funding for special

education aid); Minn. Stat. §125A.76, Subd. 8 (the payment of revenues sufficient to meet the special education maintenance of effort requirement); and Minn. Stat. §125A.79, Subd. 6 (a level of funding sufficient to pay special education excess cost aid). This funding is intended to support the provision of instruction and services to the approximately 4,885 children with disabilities receiving these services. To the extent these aids are not paid, a cross subsidy from general education revenue is required. Consequently, programs for non-special education students are reduced in order to fund special education services. Funding for these special education programs was directed by the Court in 2001 and 2005 as part of the core function of school districts and should again be ordered.

III. EVEN IF THE COURT DETERMINED THAT PUBLIC EDUCATION WAS NOT A CORE FUNCTION THAT MUST CONTINUE TO BE FUNDED, THE FUNDING OF OPEN AND STANDING OR STANDING APPROPRIATIONS IS NECESSARY AND SUPPORTED BY LAW.

The Minnesota School Boards Association, on behalf of its member districts, believes that education is a core function of the State and that this position was upheld by the Court in its 2001 and 2005 orders. Apparently there are some who disagree with this interpretation and believe that Article XI, Section 1 of the Constitution must be narrowly and strictly construed. Nevertheless, school districts are in a unique position in this regard because of the enactment of various open and standing or standing appropriations of certain education aids and credits. These appropriations were not specifically addressed in the Attorney General's Petition.

The argument against the Court ordering funding to allow the executive branch to carry out its inherent functions is based on Article XI, Section 1 of the Minnesota Constitution which purports to allow payment of money only in pursuance of an appropriation by law. It is the

position of the Minnesota School Boards Association that in addition to the requirement recognized by the Court in 2001 and 2005 that core executive branch functions must be funded, there are specific statutory appropriations in place that meet the appropriation requirements of the Constitution as they apply to a variety of education aids and credits. Consequently, since the Legislature has provided specific statutory appropriations for school districts, payment to school districts under those appropriations are consistent with the Constitution and should be ordered. The legislative appropriations relate to general education aid, debt service equalization aid, tax credits and aids, the Minnesota School Endowment Fund Apportionment, and federal funds received.

1. General Education Aid.

Minnesota Statutes §126C.20 is an open and standing appropriation for general education aid and provides, in pertinent part, as follows: “There is annually appropriated from the general fund to the department the amount necessary for general education aid.” See Minn. Stat. §126C.20. The department referred to therein is the Minnesota Department of Education. See Minn. Stat. § 120A.05, Subd. 7.

This section provides an open and standing appropriation for the payment of general education revenue as defined in Minnesota Statutes §§126C.10 and 126C.13, Subd. 4. This is a broad grant of revenue authority but does not specifically include all categorical education aids paid to school districts. Without payment of this aid, school districts will not be able to continue to provide educational programming to the students of the State or to operate and maintain their schools or school facilities.

Contrary to any suggestion otherwise, school districts cannot simply rely on their current general fund balance to stay in operation during a government shutdown. The fund balances held by school districts vary from school district to school district and will affect some school districts more dramatically than others. For instance, some districts may have sufficient reserves to run for a month or more, while others may have funds to run for a week or less. This may also lead to some school districts being forced to exceed the statutory limitations on expenditures and would cause those districts to be in statutory operating debt in violation of law. See Minn. Stat. §§ 123B.81 and 123B.83, Sub. 2. Consequently, failure to pay this revenue would violate the general and uniform provisions of Article XIII, Section 1, because there would no longer be a general and uniform system of education.

In addition to providing funding for education programming and operation and maintenance of schools and school facilities, general education aid allows school districts to meet their contractual obligations. Payment of money for this purpose is a core function and a critical service. This is especially important as it relates to teachers in independent school districts.

A statutory process must be completed by July 1 in order to place teachers on unrequested leave of absence (which is the education euphemism for a layoff of a teacher) for the next school year. The statutory process includes the opportunity for a full hearing. (See Minn. Stat. §122A.40, Subds. 10 and 11.) If the complete process for layoff has not be completed by July 1, the teacher's contract continues for the next school year. As a result, the teacher must be paid in accordance with the collective bargaining agreement, whether or not school is held, although

dates of service may be revised if allowed in the specific collective bargaining agreement. There is no statutory emergency exception if funds are withheld in the case of a State shutdown. Custodians, clerks, paraprofessionals and other nonlicensed employees can be laid off during the year but teachers in independent school districts cannot. Bus drivers could be laid off, but the statutory requirement to provide transportation to and from school would remain if school was held, which would make this action very difficult or impracticable in most situations. (See Minn. Stat. §123B.88.)

To implement the constitutional provisions of Article XIII, Section 1, the Legislature has chosen to make the general education aid appropriation an open and standing appropriation. Consequently, general education aid has been appropriated by law as required by Article XI, Section 1. The first payment date provided by law is July 15 and the general education aid payments are to be paid on a 90-10 basis in fiscal years 2012 and later. See Minn. Stat. §127A.45, Subd. 2(d) and 3. Therefore, this Court should order that payment of general education aid be continued.

2. Debt Service Equalization Aid.

In reaction to earlier constitutional challenges to the education funding system in the State of Minnesota, the Legislature adopted a debt service equalization program. The provisions of that program are set forth in Minnesota Statutes §123B.53. Under this program, a school district that is eligible for debt service equalization may apply to the Commissioner of Education by July 1 of the calendar year in which the levy is certified for debt service revenue for all bonds sold prior to the application. Thus, for levies certified in 2010 and payable in 2011, a school

district would need to apply to the Commissioner prior to July 1, 2010. After the application was approved, the school district would have reduced its debt service levy by the amount of debt service equalization aid to be received. If the debt service equalization aid is not received and the school district has a debt service payment on August 1, 2011, which is very common under existing debt service schedules, a school district applicant may be unable to make that debt service payment. This would place the school district's bond issue in default. That default could well affect the bond rating of the State of Minnesota.

In order to avoid this situation, the Legislature adopted Minnesota Statutes §123B.54 which provides a statutory standing appropriation for fiscal year 2012, for fiscal year 2013, and for all later fiscal years for the payment of debt service equalization aid under Section 123B.53. Consequently debt service equalization aid is a standing appropriation of a specified amount, appropriated by the Legislature. Therefore payment thereof would not violate Article XI, Section 1 of the Constitution and this Court should order that payment of these amounts be made in the event of a government shutdown.

3. Tax Credits and Aids.

The Legislature has also made certain open and standing appropriations to pay for tax credits and aids which reduce the amount of property taxes that are paid to a school district. Those standing appropriations relate to the residential homestead market value credit and agricultural homestead market value credit, supplementary homestead property tax relief and disparity reduction aid and credit.

More specifically, an appropriation for the residential homestead market value credit and the agricultural homestead market value credit are addressed in Minnesota Statutes §273.1384, which provides, in relevant part, as follows:

An amount sufficient to make the payments required by this section for school districts is annually appropriated from the general fund to the commissioner of education.

See Minn. Stat. §273.1384, subd. 5.

Additionally, an appropriation for supplementary homestead property relief is provided in Minnesota Statutes §273.1391, which provides, in pertinent part, as follows:

A sum sufficient to make the payments required by . . . this section is annually appropriated from the general fund to the commissioner of revenue for the purpose of funding . . . [this] section.

See Minn. Stat. §273.1391, Subd. 5.

Finally, an appropriation for disparity reduction aid and credit is provided by Minnesota Statutes §273.1398, which provides, in relevant part, as follows:

An amount sufficient to pay the aids and credits provided under this section for school districts, intermediate school districts or any group of school districts levying as a single taxing entity, is annually appropriated from the general fund to the commissioner of education.

See Minn. Stat. §273.1398, subd. 8.

In each case, the amount levied by a school district is reduced and these aids and credits are paid to the school district or other political subdivision to compensate that entity for this property tax relief. Since these amounts are appropriated by law, they should be ordered by this Court to be paid in the event of a government shutdown.

4. Minnesota School Endowment Fund.

The Legislature has also provided for the apportionment of payments from the Minnesota School Endowment Fund to school districts. The Legislature created the school endowment fund for the purpose of aid to public schools. See Minn. Stat. §127A.32. The school endowment fund “shall consist of the income from the permanent school fund.” See id.

Payment of the apportioned funds are paid as follows:

The commissioner shall furnish a copy of the apportionment of the school endowment fund to the commissioner of management and budget, who thereupon shall draw warrants on the state treasury, payable to the several districts, for the amount due each district. There is hereby annually appropriated from the school endowment fund the amount of such apportionments.

See Minn. Stat. §127A.34.

This provision is a type of open and standing appropriation and is an appropriation by law to carry out the provisions of Article XI, Section 8 of the Constitution relating to the Permanent School Fund. Therefore, this Court should order that they be paid in the event of a government shutdown.

5. Federal Funds Received.

In the Governor’s Response to the Attorney General’s Petition, the Governor refers to the appropriation of federal funds in Minnesota Statutes §4.07. That statute relates to when the Governor acts as the state agency for expenditure of federal funds and contains an annual appropriation of those federal monies as follows:

The governor or any state department or agency designated by the governor shall comply with any and all requirements of federal law and any rules and regulations promulgated thereunder to enable the

application for, the receipt of, and the acceptance of such federal funds. The expenditure of any such funds received shall be governed by the laws of the state except insofar as federal requirements may otherwise provide. All such money received by the governor for any state department or agency designated by the governor for such purpose shall be deposited in the state treasury and, subject to section 3.3005, *are hereby appropriated annually* in order to enable the governor or the state department or agency designated by the governor for such purpose to carry out the purposes for which the funds are received. None of such federal money so deposited in the state treasury shall cancel and they shall be available for expenditure in accordance with the requirements of federal law.

See Minn. Stat. §4.07, Subd. 3 (emphasis added.)

Minnesota Statutes §3.3005 provides that 20 days after a Governor's budget request that includes a request to spend federal money is submitted to the Legislature, a state agency may expend the money included in that request, unless the Legislative Advisory Commission requests further review. Minnesota Statutes §127A.09 allows the Commissioner of Education to accept and administer those federal funds that further public education. Therefore, as those federal funds have been appropriated by law, this Court should order that they be paid.

In the case of any of these payments, if the Legislature were to later appropriate a different amount or provide a different formula, the amount paid under these existing statutes could be adjusted in that legislation. This is the common fiscal methodology that is used by the Legislature when there are changes in formulas from year to year. If the Governor and the Legislature are unable for some period of time to reach agreement, the payments should be made on the basis of the existing statutes which contain the appropriations and would be adjusted when a final bill is agreed to.

The State treasury contains ample funds to fund these appropriations to continue the operation of the core functions of government to be performed by school districts. This is evidenced by the greater total appropriation amounts included in the 2011 Omnibus Education Funding Bill (Chapter 42), that was vetoed by the Governor.

In addition, while the Minnesota School Boards Association supports the appointment of a special master to make determinations on funding to support additional core functions of government to be performed by school districts, it specifically requests the Court to order the Commissioner of Education and/or the Commissioner of Management and Budget to timely issue checks or to make electronic fund transfers and to process such funds as necessary to carry out these open and standing or standing appropriations so that the core functions of government to be performed by school districts can be discharged. This would eliminate any argument that these open and standing or standing appropriations could be avoided because there was no one in the executive branch available to process and disburse them. Appropriations not included in these open and standing or standing appropriations could be considered by a special master at a later date.

CONCLUSION

School districts are obligated to perform core functions on behalf of the State and federal governments. The Court has inherent judicial authority to order continued funding of these core functions and to order the executive branch to process checks or electronic fund transfers for this purpose.

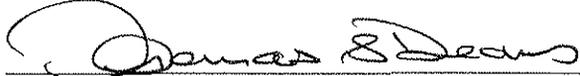
Additionally, the Legislature has adopted open and standing or standing appropriations to fund general education revenue, debt service equalization aid, certain tax credits and aids, apportionments from the Minnesota School Endowment Fund, and the disbursement of federal aids. Since the appropriations meet Constitutional requirements, the Court should order their payment. The Court has inherent judicial authority to order the executive branch to process checks or electronic fund transfers of the amounts so appropriated by law.

Failure of the Court to so order these payments will have a long and severe impact on the school districts of the State and on their ability to provide services both during and after the State shutdown.

Respectfully submitted,

KNUTSON, FLYNN & DEANS, P.A.

Dated: June 22, 2011

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