

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator
JUL 13 2011
By: BH Deputy

DISTRICT COURT
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 CRAWL 4 THE CURE AND
MINNESOTA TELECOM ALLIANCE**

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 8, 2011 and July 12, 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 Crawl 4 the Cure is denied.

2. The petition filed by Minnesota Telecom Alliance is denied.

Dated:

7-13-11

BY THE COURT:



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

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 FOR CRAWL 4
THE CURE**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 12, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; Dan Larson, Government Relations Specialist with the Minnesota Four-Wheel Drive Association; and John Johnson, Co-Founder of Crawl for the Cure.

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

Recommendation

1. Petitioner's request that the Iron Range Off-Highway Vehicle Recreation Area be opened to allow access to the Area for participants of the Crawl 4 the Cure should be **DENIED**.

Concerns of Petitioner

1. Petitioner organizes an annual event held at the Iron Range Off-Highway Vehicle Recreation Area ("IROHVRA") called the "Crawl 4 the Cure." This event raises funds for the Minnesota Chapter of the National Multiple Sclerosis Society. This year's event is scheduled to begin on July 14, 2011. Because of the shutdown, participants in the Crawl 4 the Cure Event are

unable to access the IROHVRA, and the event will be unable to proceed as scheduled. Petitioner argues that the only relief sought is a court order directing a Department of Natural Resources (“DNR”) employee to unlock the gate at the IROHVRA because no DNR employees are necessary to help oversee the event.

Analysis

1. The IROHVRA is a recreation area managed by the Department of Natural Resources (“DNR”). Petitioner argues that the IROHVRA is in essence a trail system within a confined space.

2. The Crawl 4 the Cure is an annual charitable event that raises \$50,000 for the Minnesota Chapter of the National Multiple Sclerosis Society. This event brings together individuals from throughout the country who have been affected by MS. The proceeds from this event are used by the Minnesota Chapter of the National Multiple Sclerosis Society to provide assistance to individuals stricken with MS. The event is organized by a group of dedicated volunteers and through private sponsorship.

3. The event brings approximately \$75,000 in revenue to the local area surrounding the IROHVRA. The City of Gilbert specifically supports the Petition and access to the IROHVRA for the Crawl 4 the Cure Event.

4. The Crawl 4 the Cure Event is a completely self-insured event. The Special Master heard testimony from Petitioner that the only state action required by Petitioner is the unlocking of the access gate to the IROHVRA; no other action or funding is required. However, a representative of the DNR informed the Special Master that staff is required to be on-site during any special events at all state recreation areas— including the IROHVRA. This staffing requirement is necessary to enforce facility / site rules, assume some control over liability,

respond to emergency situations, and oversee other administrative issues that may arise. DNR staff who provide these services were not deemed to provide Priority One or Priority Two Critical Services under Exhibit A to the Order.

5. The Special Master received information from the DNR that over 300 special events at facilities managed by the Department's Parks and Trails Division have been cancelled as part of the ongoing government shutdown. This includes weddings, family reunions, and one funeral.

6. The Special Master also received information from the DNR that it has not assessed the roads, trails, and buildings at the IROHVRA during the ongoing government shutdown. Accordingly, the Department is unable to determine the current conditions at the site and whether there are presently any downed trees or water damage from the recent storms that might pose a threat to public safety.

7. Petitioner argued that the IROHVRA is self-funded by user fees, and, thus does not require any legislative appropriation to remain open in the short term. Petitioner analogized the funding of the IROHVRA to that of the Minnesota Zoo, which was permitted to continue operations pursuant to the Court's July 2, 2011 Order Regarding Minnesota Zoological Garden (the "July 2nd Order"). The July 2nd Order was specifically limited to the standing appropriation to the Minnesota Zoological Garden under the special revenue fund established by law. *See* Minn. Stat. § 85A.04, subd. 1. ("All receipts from parking and admission to the Minnesota Zoological Garden shall be deposited in the state treasury and credited to an account in the special revenue fund, and are annually appropriated to the board for operations and maintenance.") (emphasis added); *see also id.*, subd. 4 ("All receipts and interest from the operation of zoo concessions, memberships, and donations must be deposited in a special

account in the special revenue fund and are appropriated to the board.”). The Special Master did not receive any evidence that the user fees paid to access the IROHVRA are subject to a standing annual appropriation like the receipts of the Minnesota Zoological Garden.

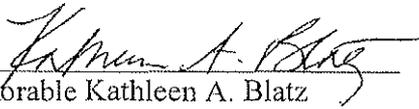
8. The Special Master heard testimony that in the week prior to the 2005 shutdown, the Commissioner of DNR granted permission to Petitioner to access the IROHVRA in order to hold Crawl 4 the Cure.

9. The Special Master heard argument that because the Crawl 4 the Cure Event provides funds to the National Multiple Sclerosis Society to aid individuals disabled by MS it is a “Priority 2 Critical Service” under Exhibit A to the Court’s Findings of Fact, Conclusions of Law, Order Granting Motion for Temporary Funding of June 29, 2011 (the “Order”). Specifically, Petitioner argued that failure to open the IROHVRA to allow for the Crawl 4 the Cure Event will have a negative financial impact to these disabled individuals, who are a vulnerable population, and thus, continued access to the IROHVRA is supported by Category 2.2 of Exhibit A to the Order.

10. In a July 11, 2011 Memorandum and Order, the Court addressed Category 2.2 in reviewing another petition addressing services to a vulnerable population. In denying that petition, the Court explained that while “[t]he denial of this petition will [affect] a particularly needy population . . . Not every admirable social program is so essential that it reaches the level required to overcome the requirements of the Minnesota Constitution.” (July 11, Order & Memorandum 2.) This ruling is in accordance with Court’s earlier recognition that not all non-profit organizations providing valuable and beneficial services to vulnerable clients may survive the shutdown, but this – an unfortunate result – is not sufficient to overcome the constitutional

mandate of Article XI. (Order p. 10-11 ¶ 31.) Accordingly, the Special Master recommends that
Petitioner's request be denied.

Dated: July 12 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 TELECOM
ALLIANCE**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 8, 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. Attorney Mike Ahern, Dorsey & Whitney LLP; and Brent J. Christenson, President and CEO, Minnesota Telecom Alliance, appeared on behalf of Petitioner.

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

Recommendation

1. Petitioner's request that the Court clarify its Order to permit Petitioner's member companies to proceed with previously-authorized Minnesota Department of Transportation ("MNDOT") Utility Right of Way Permits should be **DENIED**.

Concerns of Petitioner

1. Petitioner Minnesota Telecom Alliance ("MTA") seeks clarification and/or authorization from the Court for MTA member companies to construct and install private

telecommunications facilities on right-of-way areas owned by MNDOT in light of the suspension of permits during the government shutdown.

Analysis

1. MTA is a trade association comprised of over 80 telecommunication agencies of various sizes across Minnesota. Member companies provide telecommunication services to local communities. Maintaining and improving the telecommunication network infrastructure are vital parts of the services they deliver. A number of MTA members hold state permits from MNDOT to install private telecommunications facilities along state highway rights-of-way.

2. On June 9, 2011, MTA member companies received a memorandum from MNDOT advising them that if a government shutdown were to occur on July 1, 2011, “all work, activity, and performance under our agreements, work orders, and permits must be suspended.”

Petitioner seeks clarification that this memorandum does not prohibit its member companies from proceeding with previously approved construction.

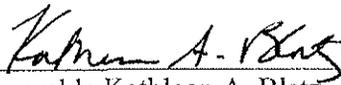
3. Petitioner does not contend that a critical core function is at stake. Instead, MTA seeks to clarify whether the memorandum was applicable to MTA permit-holders for permits that, by their terms, do not require the involvement of contemporaneous MNDOT supervision or inspection.

4. While MNDOT inspectors are typically not present during network infrastructure work, testimony was presented at the hearing that MTA member companies are subject to a number of MNDOT guidelines and rules during the course of construction, including restrictions on when materials may be placed on state property, the installation of traffic control devices, preparation of a traffic control plan, and MNDOT’s ongoing right to inspect construction.

5. The Court's Order limits the Special Master's analysis to core functions "relating to the life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitutions, and the maintenance and preservation of public property." (Order p. 15 ¶ 4.) MTA's request for relief does not stem from this authority and, while its services are important, they are not essential for "the security, benefit and protection of the people" under Article I, Section 1 of the Minnesota Constitution. (*Id.* p. 6 § 20.)

6. Petitioner's request for clarification and/or authorization to proceed with network infrastructure work along MNDOT rights-of-way should be denied.

Dated: July 12, 2011



The Honorable Kathleen A. Blatz
Special Master