

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

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By  Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. 62-CV-11-5203

**PETITION OF LEAGUE OF MINNESOTA CITIES,
FOR AN ORDER CLARIFYING THAT CERTAIN STATE AGENCY ACTIVITIES ARE
"CORE" FUNCTIONS OF GOVERNMENT CRITICAL TO THE PROVISION OF
"CORE" FUNCTIONS OF GOVERNMENT PROVIDED BY CITIES**

INTRODUCTION

The League of Minnesota Cities ("League") has a voluntary membership of 830 out of 854 Minnesota cities. The League represents the common interests of Minnesota cities before judicial courts and other governmental bodies.

The League submits this Petition relating to two particular functions of state agency operations that because of their cessation under Judge Gearin's Order issued June 29, 2011 significantly impair the ability of cities to provide certain "core" and "critical" functions of government at the local level. Specifically:

1. Continued operation of the licensing function of the Peace Officers Standards and Training (POST) Board to ensure new peace officers can continue to be licensed and provide critical public safety services to citizens; and
2. Continued operation of the driver and vehicle licensing information verification function of the Driver and Vehicle Services division of the Minnesota Department of Public Safety to ensure that critical driver licensing vehicle services

information are provided to prosecuting authorities and others so that prosecution and public safety functions are properly informed.

DISCUSSION

I. CONTINUED OPERATION OF THE PEACE OFFICER STANDARDS AND TRAINING (POST) LICENSING FUNCTION.

Judge Gearin's June 29, 2011 Order is unclear with respect to the continuing operation of the POST Board peace officer licensing function. The Order itself specifically recognizes that "Core functions include matters relating to life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitution, and maintenance and preservation of public property." June 29, 2001 Order at p. 15, ¶ 4. On the other hand, it specifically adopts the Governor's recommendation that POST, the very agency that licenses individuals (peace officers) charged with carrying out these responsibilities, be closed. *Id.*, Ex. A at p. 9.

A number of cities have identified that they are in the process of hiring peace officers to fill vacancies for critical law enforcement positions. Many of the prospective candidates are new recruits that cannot legally perform their jobs unless they can receive a license from POST. The inability to hire new licensed peace officers significantly impairs the ability of many cities to perform key law enforcement functions.

On short notice, several cities have already identified that they are in the process of hiring peace officers to fill vacancies for critical law enforcement positions. Many of the prospective candidates are new recruits that cannot legally perform their jobs unless they can receive a license from POST.

This issue could result in particular hardships in small communities that would not have the police resources available in the event one or two officers resign or are dismissed for

disciplinary reasons. For instance, in one northern Minnesota city, two of its four officers are under investigation. So depending on the results of the investigation, the city would need the ability to hire new licensed officers to provide adequate police protection in the community.

This problem will only become further exacerbated the longer the state government shutdown continues.¹ Accordingly, the League asks for an order declaring that the POST peace officer licensing function is a “core” and “critical” government function, and therefore should continued to be funded even in the absence of a budget agreement.²

II. CONTINUED FUNDING OF DRIVER AND VEHICLE SERVICES FUNCTION.

Just as with closure of the POST function, Judge Gearin's Order is unclear with respect to continued funding of the driver and vehicle licensing information verification functions of the Driver and Vehicle Services Function of the Department of Public Safety.³ On one hand, the Order explicitly recognizes that “Law enforcement and criminal investigations,” are “Priority 1 Critical Services,” but on the other hand, it fails to specifically recognize (by not funding) the important role that DVS information plays in the ongoing prosecution function related to various crimes. For instance, the attached copy of a July 1, 2011 email from Minneapolis City Attorney Susan Segal (Exhibit A) identifies how lack of access to key DVS information impairs the critical prosecution function for which her office is responsible. The email identifies the following impacts:

¹ A similar argument now can be made under Minn. Stat. § 299N.05 with respect to licensing requirements for full-time firefighters “employed on or after July 1, 2011”, who after that date, are required to be licensed by the Minnesota Board of Firefighter Training and Education. To date, however, no cities have identified this as an issue.

² The League also believes it can be persuasively argued that denial of licensure to prospective new peace officer candidates who meet its legal qualifications is a denial of the due process of rights of the prospective job candidates.

³ Due to its impact on the effective administration of justice, it is also unclear in light of Judge Bruce Christopherson's June 28, 2011 Order in the companion case regarding the continued funding the State Court System.

- Prosecutors cannot access DVS information from their desktops. They would only be able to access information through the police department's Criminal Justice Information System (CJIS); and since only certain people in the office are certified to access the CJIS terminal, there may be a delay in accessing DLs and other records.

- Also since the Department of Public Safety (DPS) is closed, they presumably will not be updating any driver license (DL) statuses. Therefore, if an individual's license is revoked on June 30 but becomes valid later on, the system will not reflect that. Also if an individual loses their license after July 1, the license may still show as valid. This would cause issues in prosecuting current and future cases. Additionally, once the shutdown is over, DPS will presumably begin updating DL statuses again, but there will likely be delays in doing so.

- Since the Violations Bureau will also not be able to access this information, there may be an increase in the number of cases that are set for court because of this.

Similarly, the attached email from Kurt Glaser (Exhibit B), prosecutor for Centerville and Lexington, further illustrates how the lack of access to DVS information could impair local prosecution functions related to driving under the influence and other traffic offenses.

In short, the lack of access to timely and accurate DVS information will likely impair the critical public safety and court function associated the prosecuting individuals charged with traffic offenses. Accordingly, the League asks for an order clarifying that the Department of Public Safety, Division of Driver and Vehicle Services information continue to be maintained and made available to prosecuting authorities to enable those individual to perform their critical public safety function, and to enable them to adequately fulfill their responsibilities to the public and the courts related to the fair administration of justice.

III. OTHER MATTERS

Finally, and while not specifically encompassed by this Petition, the League wants to preserve for the record that it may in the future raise other matters depending on how long the state government shutdown continues. For instance, one item relates to the certification of 2012 Local Government Aid (LGA) for purpose of 2012 city budgets. Under Minn. Stat. § 477A.014,

by August 1, 2011 the Minnesota Department of Revenue is required to certify to affected local units of government, their respective LGA amounts for the next year so that cities and other local units of government are able to factor those amounts into the budget and property tax levy calculation. Cities for instance, are required by Minn. Stat. § 275.065 to certify their preliminary 2012 property tax levy by September 15, 2011. The preliminary levy required to be adopted by each city becomes the maximum levy amount the city can adopt when they finalize their 2012 property tax levy in December. Without the necessary 2012 LGA certification amounts, cities cannot effectively perform this critical function of the tax levy process. Judge Gearin's Order specifically recognizes that "Preservation of the essential elements of the financial system of the government" is a "core critical" function of government that should be continued even if there is no resolution of the present funding dispute. In addition, the amounts necessary to administer the LGA certification process have already been lawfully appropriated under Minn. Stat. § 477A.03 Subd. 2, and therefore it ought to be funded just as Judge Gearin ordered with respect to the LGA amounts themselves.

Another item could likely include the impacts associated with suspension of state highway construction projects including prohibition of local government work in state right-of-ways. The League believes that continued suspension of state and local road work could violate the Department of Transportation's Constitutional obligation to provide a "trunk highway system" that "shall be constructed, improved and maintained as public highways by the state."⁴

⁴ Minn. Const. Art. XIV § 2. The League believes a strong argument can be made that certain state highway construction projects ought to be funded because failure to do so violates Article XIV, section 2 of the Minnesota Constitution requiring the state to improve and maintain a trunk highway system and further that they fulfill a "core" function of government. (For instance, in 2005, Ramsey County District Court Judge Greg Johnson specifically noted that over 200 state

CONCLUSION

The League respectfully acknowledges the serious issues addressed by the Attorney General and the Governor; however, it believes failure to fund POST and DVS operations, as discussed in this Petition, seriously affects city ability to perform critical and core functions of local government, including the safety and security of persons and private and public property in our cities and the proper and timely administration of justice in our court system. Accordingly, the League respectfully requests an Order to clarify that:

1. POST's peace officer licensing function continue to be funded; and
2. Department of Public Safety, DVS driver and vehicle licensing information continue to be funded, updated and made accessible to local prosecuting authorities.

Respectfully Submitted,

LEAGUE OF MINNESOTA CITIES



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Date: July 5, 2011

highway construction projects were "core" functions of government.) See p. 13 of Ex. B to June 23, 2005 Order in *In re Temporary Function of Core Functions of the Executive Branch of the State of Minnesota*, No. C0-05-5928 (Ramsey Co. Dist. Ct.) (listing "continuation of active (200) construction projects") and June 23, 2005 Order at p. 8, ¶ 2 ("Core functions shall include, but are not limited to, the services set forth in the Core and Critical Functions List attached as Exhibit B to this Order.")

"Exhibit A"

Grundhoefer, Tom

From: Segal, Susan L. [Susan.Segal@ci.minneapolis.mn.us]
Sent: Friday, July 01, 2011 4:57 PM
To: Grundhoefer, Tom
Cc: Willette, Pierre V.
Subject: FW: State Shutdown Update re DVS Access

Tom – Below is a short summary of the shutdown impact related to DVS:

The State Shutdown has affected our office's ability to access some DVS information. Since DPS's funding ended on June 30, 2011, most of their data is shut down. What that means for us is:

1. We cannot access DVS information from our desktops. We can access information through the CJIS terminal in 310 ½. Therefore since only certain people in the office are certified to access the CJIS terminal, there may be a delay in accessing DLs and other records. Please ask early if you need a DL run.
2. Also since DPS is shut down, they will not be updating any DL statuses. Therefore, if you are revoked on June 30 but become valid, your DL will not reflect that. Also if you are due to lose your license on July 1, your license will still show as valid. This could cause some issues in prosecuting current and future cases. Once the shutdown is over, DPS will begin updating DL statutes again, but I am guessing that there will be some delays in doing so.
3. Violations Bureau will also not be able to access this information, so we may see an increase in the number of cases that are set for court because of this. They are working around this, so hopefully it won't be a huge problem.
4. DDP - (pilot Diversion Program for people with driving after suspension, etc.) is also currently shut down. They will not accept any new clients or processing payments from existing clients.
5. MNCIS still will be updated.
6. The DANCO database and OFP databases will still be updated.
7. The BCA criminal history database will still be updated from MNCIS.

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"Exhibit B"

Grundhoefer, Tom

From: Kurt Glaser [kurtglaser@glaserlaw.net]
Sent: Friday, July 01, 2011 10:54 AM
To: Grundhoefer, Tom
Subject: Govt Shutdown Example - Suburban Prosecutors Lose Access To DVS Records

Tom

I am a private attorney appointed to serve as the prosecutor for two Anoka suburbs (Lexington and Centerville). Because I am not an employee of the government DVS only grants me "vendor" access to their traffic records instead of "law enforcement" access. "Vendor" access to DVS was turned off today because of the Government Shutdown. I am trying to prepare criminal complaints for DWIs and other traffic matter and cannot access any DVS records. I can have my police department run those records in the meantime but that has a time-value risk that in some circumstances it could result in some arrestees being released from jail without being put on bail/bond or without alcohol-related conditions for release (i.e. Ignition interlock, breath testing, etc.).

I hope this helps you.

Kurt Glaser

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