

STATE OF MINNESOTA
COUNTY OF RAMSEY

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

FILED
Court Administrator
JUN 15 2005
By  Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil
Court File No. CO 05 5928

PETITION

Attorney General Mike Hatch petitions the Court as follows:

PARTIES

1) Petitioner is the duly elected Attorney General of the State of Minnesota. In this capacity he has the authority under the Minnesota Constitution, Minnesota statutes and Minnesota common law to represent the State and its interests in all matters before the Court. He also represents the people of the State in a *parens patriae* capacity.

2) The Governor is entrusted under Article V, Section 3 of the Minnesota Constitution to ensure that the laws of the State are executed. He has extensive authority under the common law and under Minnesota Statutes Chapter 4 and elsewhere.

3) County governments are charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal government. County governments receive funds from the state and federal government to perform these core functions.

4) School districts of the State of Minnesota are charged under federal and state law to perform certain core functions on behalf of state and federal government. The school districts receive funds from the state and federal government to perform these core functions.

5) Municipal subdivisions of the State of Minnesota are charged under federal and state law to perform certain core functions on behalf of the state and federal government. The

municipal subdivisions receive funds from the state and federal government to perform these core functions.

6) The State of Minnesota has not adopted a budget for many executive branch agencies for Fiscal Year 2006. The legislature has appropriated funds for some of the executive branch officials and agencies. *See* Act of May 26, 2005, ch. 107 (Higher Education Finance bill); Act of June 2, 2005, ch. 136 (Omnibus Public Safety bill); and Act of June 3, 2005, ch. 156 (State Government Finance bill). A complete list of agencies which have and have not been funded can be found at a Website established by the Minnesota Department of Employee Relations (<https://extranet.doer.state.mn.us/shutdown/Default.htm>). That list is provided to the Court as Exhibit 1 to the Affidavit of Mike Hatch. The following Public Officials serve in a variety of capacities on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government. The agencies headed by these Officials have not been funded.

- 1) Gene Hugoson, Department of Agriculture,
- 2) Alice Seagren, Department of Education,
- 3) Glenn Wilson, Department of Commerce,
- 4) Matt Kramer, Department of Employment and Economic Development,
- 5) Dianne Mandernach, Department of Health,
- 6) Kevin Goodno, Department of Human Services,
- 7) Sandy Layman, Iron Range Resources and Rehabilitation Board,
- 8) Scott Brener, Department of Labor and Industry,
- 9) Gene Merriam, Department of Natural Resources,
- 10) Sheryl Corrigan, Minnesota Pollution Control Agency,

- 11) Tim Marx, Housing Finance Agency,
- 12) Michael Campion, Public Safety (partially funded),
- 13) Carol Molnau, Transportation.

7) In addition to the above Public Officials, there are a variety of boards, commissions and the like which act on behalf of state government and may perform core functions.

8) The United States Attorney is charged to represent the federal government and its interests as it relates to certain services being performed by the state and local government on its behalf.

9) For purposes of this Petition, the parties described in paragraphs 2-8 above are referred to as "Government Entities."

10) The State and local agencies perform core functions of government, which include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. By way of example, core functions include, but are not limited to, the provision of healthcare to patients in state-run facilities and programs and the funding of patient care and services in local government or private facilities or programs, such as hospitals, nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services; the State's education system; the application and maintenance of federal and/or State contracted or mandated programs and projects, such as welfare, medical assistance, emergency and housing programs and construction projects; the preservation of safety in state-run facilities; enforcement of laws involving food, drugs, hazardous materials, safety in modes of transportation and state highways (such as the inspection of products and services provided pursuant to construction contracts), and the proper

provision of healthcare; the integrity of law enforcement activities; emergency and disaster assistance; activities that ensure the continued production of power, maintenance of the power distribution system, and telecommunications systems; protecting the state and federal constitutional rights of Minnesota citizens; care of patients in the custody of the government; protection and maintenance of lands, buildings, waterways, transport property, equipment and other property owned or leased by the state government; activities essential to the preservation of the elements of the financial system of the State, including prompt payment of amounts owed to employees, vendors, and contractors.

11) Jurisdiction in this action is based upon Minn. Stat. § 484.01 (2004). Venue is appropriate in this district under Minn. Stat. § 542.01 (2004).

FACTUAL AND PROCEDURAL BACKGROUND

12) Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this State except in pursuance of an appropriation by law.” Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota Government to operate. The State of Minnesota has not enacted a state budget for many of the Government Entities for the fiscal year beginning July 1, 2005.

13) The Government Entities are required to perform certain services which have been identified as “core or inherent” functions which cannot be abridged by the Legislative Branch. Some of these core functions are identified under the Minnesota Constitution. Other core functions are identified in the United States Constitution. Yet other core functions are mandated by the federal government pursuant to the Supremacy Clause of the United States Constitution.

14) STATE CONSTITUTION: Core functions Of Executive Branch: For instance, the Minnesota Constitution imposes a variety of core functions upon the five Constitutional Officers which may not be abridged by the Legislative Branch. See *State ex. rel. Mattson vs. Kiedrowski*, 391 NW 2nd 777 (Minn. 1986). The first mandate set forth in the Minnesota Constitution is that “government is instituted for the security, benefit and protection of the people, in whom all political power is inherent...” Article I, Section 1. The Governor has responsibility to protect life, liberty and property by the collection of revenue, by ensuring maintenance and security of government property such as parks, buildings and roads, and by protecting the citizens’ rights under the Bill of Rights as set forth in the State Constitution.

15) U.S. CONSTITUTION: Core functions of Executive Branch: In addition, the 14th Amendment of the United States Government mandates that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” Pursuant to this provision the Government Entities are required to perform certain core functions of government to protect life, liberty and property.

16) In 2001 Petitioner petitioned this Court to act to preserve the operation of core functions of the executive branch of government after the Minnesota Legislature had failed to pass a budget funding state government. At that time this Court issued an Order directing that state and local agencies continue to perform the core functions required by the Minnesota and United States Constitutions and by federal law, and that the State continue to pay for such functions performed after July 1, 2001. See *In Re Temporary Funding of Core Functions 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. D.Ct., filed June 29, 2001) (attached to Petitioner's Memorandum in Support of Motion for Relief in this matter). In that Order the Court directed state and local agencies to determine what core functions were required to be performed by each. State executive branch agencies made such determinations, and the list of "critical" operations, listed by agency, which were to remain open in the event of a state government shutdown as of July 1, 2001, is contained in Exhibit 2 to the Affidavit of Mike Hatch submitted in support of this Petition.

17) The Office of Management and Budget ("OMB") and the United States Attorney General have used, with regard to a federal government shutdown, the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

18) Pursuant to the above criteria, the OMB determined that the following activities, among others, are core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Law enforcement and criminal investigations;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities necessary to maintain protection of research property.

19) STATE CONSTITUTION: Education Funding: In addition, the Minnesota Constitution requires that the State provide a "general and uniform system of public school." This provision requires that the State mandate and finance an "adequate" level of education that

is uniformly available to all students. Some of the Government Entities are responsible for providing such a core function of government.

20) FEDERAL MANDATES AND AGREEMENTS: Supremacy Clause of U.S. Constitution: In addition, the Supremacy Clause of the United States Constitution requires that the State of Minnesota perform certain core functions of the government pursuant to enter governmental compact, agreement or congressional mandate. In many instances the State of Minnesota has agreed to undertake certain administrative duties on behalf of or in concert with the federal government. Such core functions include, but are not limited, administration and payment of medical assistance, general assistance and a variety of federal and government programs designed to assure for the safety and welfare of its citizens. Pursuant to the Supremacy Clause, these core functions of government must be administered by the Government Entities and paid for by the State of Minnesota.

21) The Commissioner of Finance administers the payment of obligations of the State of Minnesota.

22) The State Treasury contains ample funds to continue the operation of the core functions of government after June 30, 2005.

23) The Attorney General's Office has been advised that Governor Tim Pawlenty is preparing a list of the core functions of the State executive branch.

Wherefore, Petitioner seeks the following relief:

1) A declaration that, pursuant to the separation of powers doctrine of the Minnesota Constitution, the Executive Branch of State Government must undertake such core functions as required by the Minnesota State Constitution, the U.S. Constitution and

the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and that the State of Minnesota shall pay for such services.

2) An Order that the Commissioner of Finance shall issue checks and process such funds as necessary to pay for such obligations of the State of Minnesota.

3) An Order that each of the Government Entities shall, consistent with the terms of this Order, determine what core functions are required to be performed by it. Each Government Entity shall verify the performance of such services to the Commissioner of Finance, who shall pay for such services until such further Order of the Court.

4) An Order that a Special Master be appointed by the Court to resolve any issues relating to the definition of core functions and the payment of them. That the State of Minnesota shall pay the reasonable fees of the Special Master.

Dated: June 15, 2005

Respectfully submitted,

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