

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

JUN 29 2001

By lg 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. C9-01-5725

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
MOTION FOR TEMPORARY FUNDING**

On June 21, 2001, this Court issued an Order to Show Cause setting a hearing date of June 29, 2001 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2001. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. At the hearing on June 29, 2001 appearances were made by Attorney General Mike Hatch and Chief Deputy Attorney General Alan I. Gilbert on behalf of Petitioner. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.
2. The Minnesota Legislature ended its regular session this year on May 21, 2001 without approving appropriations for nearly all of the executive branch officers and agencies for

the fiscal year beginning on July 1, 2001. On June 11, 2001 Governor Jesse Ventura convened the legislature in special session. The special session has not resulted in any appropriations for the executive branch officers and agencies.

3. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the six executive branch Constitutional Officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

4. The following Public Officials appointed by the Governor serve in a variety of capacities in the executive branch of government 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:

- 1) David Fisher, Department of Administration,
- 2) Gene Hugoson, Department of Agriculture,
- 3) Christine Jax, Department of Children, Families and Learning,
- 4) James Bernstein, Department of Commerce,
- 5) Cheryl Ramstad Hvass, Department of Corrections,
- 6) Earl Wilson, Department of Economic Security,
- 7) Julien Carter, Department of Employee Relations,
- 8) Pamela Wheelock, Department of Finance,
- 9) Jan Malcolm, Department of Health
- 10) Janeen Rosas, Department of Human Rights,

- 11) Michael O'Keefe, Department of Human Services,
- 12) John Swift, Iron Range Resources and Rehabilitation Board,
- 13) Gretchen Maglich, Department of Labor and Industry,
- 14) Major General Eugene Andreotti, Department of Military Affairs,
- 15) Allen Garber, Department of Natural Resources,
- 16) Charles Weaver, Department of Public Safety,
- 17) Matthew Smith, Department of Revenue,
- 18) Rebecca Yannish, Department of Trade and Economic Development,
- 19) Elwyn Tinklenberg, Department of Transportation,
- 20) Jeffrey Olson, Department of Veterans Affairs,
- 21) Karen Studders, Minnesota Pollution Control Agency,
- 22) Dean Barkley, Department of Planning,
- 23) Morris Anderson, Chancellor, Minnesota State Colleges and Universities,
- 24) Howard Bicker, Executive Director, State Board of Investment,
- 25) Katherine G. Hadley, Housing Finance Agency,
- 26) Ted Mondale, Chair, Metropolitan Council,
- 27) Richard Scherman, State Board of Public Defense, and
- 28) David S. Paull, Board on Judicial Standards.

5. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of occupational and licensing boards, regulatory boards, mediation bureaus, minority affairs counsels, and other commissions which act on behalf of state government and perform core functions.

6. 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 these 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 the school districts.

7. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2001, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

8. Examples of the federal programs referenced in paragraph 7 include the following welfare programs: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for

which they were eligible. *See* 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S. § 1396a(a)(10) and (9). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c.

9. Due to the lack of legislative appropriations, the six Constitutional Officers of the State of Minnesota, the executive branch agencies, and the local units of Minnesota government, have insufficient funds to carry out all of their core functions as of July 1, 2001. Any failure to properly fund core functions of the executive branch would have severe consequences for the citizens of Minnesota.

10. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used 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.

11. Pursuant to the criteria referenced in paragraph 10 above, the OMB determined that the following activities, among others, were 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;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

12. The State of Minnesota is not facing a budget crisis. The State has ample reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2000) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2000).

3. 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.

4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to

fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that “government is instituted for the security, benefit and protection of the people” Article I, Section 1. Minnesota citizens are guaranteed under both the United States and Minnesota Constitutions the right to due process before deprivation of life, liberty or property. U.S. Const. Amendments III and IV; Minn. Const., Article I, Section 7. Minnesota citizens are guaranteed a wide range of rights under the Bill of Rights in both constitutions. U.S. Const. Amendments I-X; Minnesota Const. Article I. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2001.

7. The Minnesota Constitution requires that the State provide an adequate education through a “general and uniform system of public schools.” Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, Aid to Families with Dependent Children and other similar welfare or social service programs, and the Section 8 housing program. Under these agreements continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions 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), the proper provision of healthcare and the integrity of our judicial system; law enforcement, criminal investigations, and prosecutorial and public defender 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 prisoners and others 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 revenue collection, borrowing, payment of debts, compliance with bond and similar

requirements, maintenance of pensions, retirement programs and investment of state and retirement assets and prompt payment of amounts owed to employees, vendors, and contractors.

ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.
2. The Minnesota Commissioner of Finance, Pamela Wheelock, and the Minnesota Treasurer, Carol Johnson, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.
3. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Commissioner of Finance and the State Treasurer, who shall pay for such services.
4. Esther Tomljanovich is hereby appointed as a Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.
5. This Order shall be effective until the earliest of the following:
 - a. July 23, 2001;
 - b. The enactment of a budget by the State of Minnesota to fund the core functions of government after June 30, 2001; or

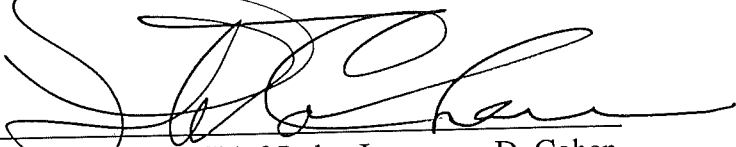
c. Further Order of this Court.

6. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

- a. The Honorable Jesse Ventura, Governor of the State of Minnesota,
- b. The Honorable Don Samuelson, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Pamela Wheelock, Commissioner of Finance,
- e. The Honorable Carol Johnson, Minnesota State Treasurer, and
- f. The Honorable Robert Small, Acting U.S. Attorney for the District of Minnesota.

7. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

BY THE COURT:



The Honorable Chief Judge Lawrence D. Cohen

Dated this 29th day of
June, 2001.

EXHIBIT A
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SERVICE LIST: SCHOOL BOARD SUPERINTENDENTS

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<p>Russell Smith, Superintendent 509 Carlton Avenue Cloquet, MN 55720</p>	<p>Herbert Hilinski, Superintendent P. O. Box 7 Cromwell, MN 55726</p>
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Alan Foley, Superintendent PO Box 399 Red Lake Falls, MN 56750	Rick Ellingworth, Interim Superintendent 100 George Ramseth Dr. Redwood Falls, MN 56283
Les Potas, Superintendent PO Box 10 Milroy, MN 56263	Christopher Thomalla, Superintendent PO Box 69 Wabasso, MN 56293
Stephen Kjorness, Superintendent PO Box 278 Walnut Grove, MN 56180	Keith Dixon, Superintendent PO Box 618 Fairbault, MN 55021
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Kevin McKeever, Superintendent PO Box 68 Badger, MN 56714	Herbert Benz, Superintendent 509 3rd St. NE Roseau, MN 56751
David Kragness, Superintendent 510 Cedar Ave. NW Warroad, MN 56763	Robert Kaiser, Superintendent 300 3rd Ave. SW Chisholm, MN 55719
Ray Toutloff, Superintendent 600 E. Harvey St. Ely, MN 55731	Rob Benson, Superintendent PO Box 287 Floodwood, MN 55736
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<p>Sherm Carlson, Superintendent 131 9th Ave. Proctor, MN 55810</p>	<p>Wallace Schoeb, Superintendent 411 5th Avenue South Virginia, MN 55792</p>
<p>Bob Kresbach, Interim Superintendent 13090 Westley Drive Nett Lake, MN 55772</p>	<p>Julio Almanza, Superintendent 215 N. 1st Ave. E Duluth, MN 55802</p>
<p>James Techar, Superintendent PO Box 537 Mountain Iron, MN 55768</p>	<p>Tom Lubovich, Superintendent 220 S. Market St. Belle Plaine, MN 56011</p>
<p>Larry Kauzlarich, Superintendent 500 Sunset Drive Jordan, MN 55352</p>	<p>Les Sonnabend, Superintendent PO Box 539 Prior Lake, MN 55372</p>
<p>Jon McBroom, Superintendent 505 Holmes St. S. Shakopee, MN 55379</p>	<p>Frances Poplua, Superintendent 301 Lexington Ave. S. New Prague, MN 56071</p>
<p>Jim Mantzke, Superintendent 12000 Hancock St. Becker, MN 55308</p>	<p>Laverne Lageson, Superintendent PO Box 410 Big Lake, MN 55309</p>
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<p>John Messelt, Superintendent PO Box 368 Kimball, MN 55353</p>	<p>Nordy Nelson, Superintendent 546 N. 5th Ave. E Melrose, MN 56352</p>
<p>Howard Caldwell, Superintendent 217 W. Mill St. Paynesville, MN 56362</p>	<p>Jim Lee, Interim Superintendent 628 Roosevelt Rd. St. Cloud, MN 56301</p>
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<p>Cornelius Smit, Superintendent 2420 28th St. Slayton, MN 56172</p>	<p>Ken Scarborough, Superintendent 202 Pleasant Avenue NE Staples, MN 56479</p>
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<p>Commissioner Charles R. Weaver Department of Public Safety Suite 1000 NCL Tower 445 Minnesota Street St. Paul, MN 55101</p>	<p>Commissioner Rebecca Yannish Department of Trade & Economic Developmt. 500 Metro Square Building 121 7th Place East St. Paul, MN 55101</p>
<p>Commissioner Matthew G. Smith Department of Revenue 600 N. Robert Street St. Paul, MN 55146</p>	<p>Commissioner Jeffrey L. Olson Department of Veterans Affairs Veterans Services Building St. Paul, MN 55155</p>
<p>Commissioner Elwyn G. Tinklenberg Department of Transportation Transportation Building 395 John Ireland Blvd. St. Paul, MN 55155</p>	<p>Director Dean Barkley, Minnesota Planning Office of Strategic and Long Range Planning 300 Centennial Building 658 Cedar Street St. Paul, MN 55155</p>
<p>Commissioner Karen A. Studders Minnesota Pollution Control Agency 520 Lafayette Road St. Paul, MN 55155</p>	<p>Richard Scherman State Board of Public Defense 331 S. 2nd Ave., #900 Minneapolis, MN 55401</p>
<p>Chancellor Morris J. Anderson Minnesota State Colleges & Universities 30 East 7th Street, Suite 500 St. Paul, MN 55101</p>	<p>David S. Paull, Executive Secretary Board on Judicial Standards 2025 Centre Pointe Blvd., Suite 420 Mendota Heights, MN 55120</p>

Activity Summary

62-C9-01-005725

Civil Other

Date filed: 06/21/2001

TEMPORARY FUNDING OF CORE FUNCTIONS OF THE EXECUTIVE BRANCH OF
STATE OF MINNESOTA [COHEN]

Date	Activity	Start/End	Judge	CrtRm	Intrp	Chgs	Cont	SrvcDate
06/21/01	Case Filed	10:53	10:53					
	1) PETITION							
	2) MOTION FOR ORDER TO SHOW CAUSE (BILLED - INVOICE #002343)							
								FILED LH
06/21/01	Order	10:55						
	3) ORDER TO SHOW CAUSE; COHEN;							
								FILED LH
06/22/01	Judge Assn	10:55	L Cohen					
	***** ASSIGNED TO JUDGE LAWRENCE COHEN *****							
	NOTICES MAILED.							
06/25/01	Doc. Filed	08:42						
	4) PETITIONER'S MEMO IN SUPPORT OF MOTION FOR RELIEF W/ ATTACH. FILED RMB							
06/26/01	Doc. Filed	09:02						
	5) PETITIONER'S MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF							
06/26/01	Affidavit	09:06						
	1-4A) 11 AFFIDAVITS OF SERVICE WITH ATTACHED MASTER SERVICE LIST							
								LJG
06/27/01	Affidavit	04:18						
	8. AFF. OF DAKOTA COUNTY COMMISSION MICHAEL E. TURNER W/SERV. - COX							
06/28/01	Doc. Filed	01:08						
	6) CARE PROVIDERS OF MINNESOTA'S MEMORANDUM IN SUPPORT OF TEMPORARY FUNDING OF GOVERNMENT ASSISTANCE PROGRAMS SERVING VULNERABLE CITIZENS. BH							
06/28/01	Doc. Filed	03:39						
	7. MEMO. AMICUS CURIAE ON BEHALF OF THE HONORABLE JESSE VENTURA, GOVERNOR OF THE STATE OF MINNESOTA - W/ATTACH - W/SERV. COX							
06/29/01	Affidavit	10:27						
	\$132. 9) AFF OF COMMISSIONER MIKE OPAT W/AFF OF SERV. FILED RMB							
06/29/01	Affidavit	11:15						
	10) AFFIDAVIT OF MIKE HATCH. FILED RMB							
06/29/01	Hearing	01:30	L Cohen					
	ORDER SHOW CAUSE HRG - ATTY GENERAL							
06/29/01	Order	04:41						
	11) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING MOTION FOR TEMPORARY FUNDING, JUDGE LAWRENCE COHEN, 6-29-01; MN STATE AGENCY SHALL PERFORM THE CORE>>>>>							
06/29/01	Order	04:41						
	<<<FUNCTIONS OF GOVERNMENT AND STATE OF MN SHALL PAY FOR SUCH SERVICES (SEE ORDER)							
								LJG
07/02/01	Closed	11:32						
07/06/01	Affidavit	01:44						
	12) AFFIDAVIT OF JOHN P. KINGREY							
	13) AFFIDAVIT OF JIM MULDER							
								LJG
01/21/02	Archive							
=====Pending Activities=====								
06/24/05	Archive	10:58	10:58					



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

June 21, 2001

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (651) 296-6196

Dear Government Entity:

Enclosed herewith and served upon you by U.S. Mail is a copy of an Order to Show Cause concerning the Interim Funding the Executive Branch of State Government. This Order invites you to attend a hearing regarding the performance and payment of the core functions of government should the state government not enact a state budget for the fiscal year beginning July 1, 2001.

On Friday, June 29, 2001, at 1:30 p.m., the first Motion will be made by this Office for a Court Order that certain government entities, which could include you as a public official or the government entity you represent, to perform the core functions of government as required by the Minnesota State Constitution, the United States Constitution, and by the federal government pursuant to the Supremacy Clause of the United States Constitution. The Motion will also request the Court to order that the State of Minnesota, through Commissioner of Finance Pamela Wheelock and State Treasurer Carol Johnson, pay for such services.

Because of the large number of government entities that are being served and the limited time in which the hearing can be conducted, each level of government listed on the service list might consider utilizing its respective professional association to file a written memorandum regarding the matter.

We will be sure to send you a copy of any order that is issued by the Court.

Very truly yours,

130

Mike Hatch
Attorney General

MAH/rh

AG: 489178.v. 01

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

Court File No. 09-01-5725

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

ORDER TO SHOW CAUSE

TO: The Government Entities set forth on Exhibit A:

Based upon the motion of Petitioner Attorney General Mike Hatch, you are Ordered to Show Cause why this Court should not grant Petitioner's motion to declare that the core functions of government be undertaken as set forth in the Petition and that the Honorable Carol Johnson, Treasurer of the State of Minnesota, and the Honorable Pamela Wheelock, Minnesota Commissioner of Finance, on behalf of the State of Minnesota, be directed to pay for such core functions performed by the State's Executive Branch and certain Government Entities as identified in Exhibit A of this Order, after June 30, 2001.

The hearing shall take place on Friday, June 29, 2001 at 1:30 p.m. before the Honorable Chief Judge Lawrence D. Cohen, Ramsey County District Court, Courtroom 880 in the Ramsey County Courthouse, St. Paul, Minnesota.

At the hearing the Petitioner shall make a motion to the Court that the State of Minnesota pay for services necessary to discharge the core functions under Minnesota and federal law by the State's Executive Branch and the Government Entities identified in Exhibit A until the earliest of the following:

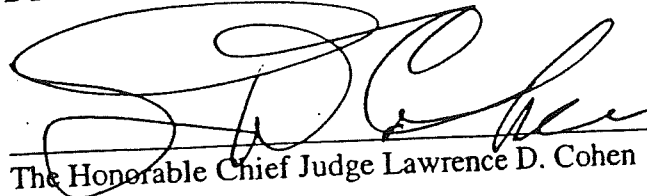
- 1) July 23, 2001,
- 2) The enactment of a budget by the State of Minnesota to fund government services after June 30, 2001, or
- 3) Further order of this Court.

The Petitioner has also moved the Court for an Order that a Special Master be appointed by the Court to resolve issues which arise concerning the identification of core functions, and the Government Entities that shall perform them and the Parties that shall pay them.

It is hereby ordered that the Petitioner shall serve by U.S. Mail a copy of this Order to the Government Entities listed in Exhibit A. The Petitioner shall also serve, by personal service, a copy of this Order upon the following parties:

- 1) The Honorable Jesse Ventura, Governor of the State of Minnesota,
- 2) The Honorable Don Samuelson, President of the Minnesota State Senate,
- 3) The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- 4) The Honorable Pamela Wheelock, Commissioner of Finance,
- 5) The Honorable Carol Johnson, Minnesota State Treasurer, and
- 6) The Honorable Don C. Nickerson, U.S. Attorney.

BY THE COURT


The Honorable Chief Judge Lawrence D. Cohen

Dated this 21st day of
June, 2001.
AG: 488493, v. 01

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

Case Type: Civil

Court File No. _____

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) In addition, the Executive Branch is composed of five other duly elected Constitutional Officers as specified in Article V of the Constitution of the State of Minnesota. These Officers include the Secretary of State, who has authority to regulate the conduct of elections and to accept and keep records relating to the filing of documents under the Uniform Commercial Code and other statutes; the State Auditor, who is charged with the duties of supervising and managing the fiscal concerns of the State and has audit authority over local political subdivisions of the State and other entities; the State Treasurer, who has authority and

responsibility to receive and process deposits of public monies and other duties as provided by law; and the Attorney General, who is authorized to represent the legal interests of the State in courts and elsewhere; and the Lieutenant Governor.

4) 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.

5) 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.

6) 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.

7) 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:

- 1) David Fisher, Department of Administration,
- 2) Gene Hugoson, Department of Agriculture,
- 3) Christine Jax, Department of Children, Families and Learning,
- 4) James Bernstein, Department of Commerce,
- 5) Cheryl Ramstad Hvass, Department of Corrections,
- 6) Earl Wilson, Department of Economic Security.

- 7) Julien Carter, Department of Employee Relations,
- 8) Pamela Wheelock, Department of Finance,
- 9) Jan Malcolm, Department of Health
- 10) Janeen Rosas, Department of Human Rights,
- 11) Michael O'Keefe, Department of Human Services,
- 12) John Swift, Iron Range Resources and Rehabilitation Board,
- 13) Gretchen Maglich, Department of Labor and Industry,
- 14) Major General Eugene Andreotti, Department of Military Affairs,
- 15) Alan Garber, Department of Natural Resources,
- 16) Charles Weaver, Department of Public Safety,
- 17) Matthew Smith, Department of Revenue,
- 18) Rebecca Yannish, Department of Trade and Economic Development,
- 19) Elwyn Tinklenberg, Department of Transportation,
- 20) Jeffrey Olson, Department of Veterans Affairs,
- 21) Karen Studders, Minnesota Pollution Control Agency,
- 22) Dean Barkley, Department of Planning,
- 23) Morris Anderson, Chancellor, Minnesota State Colleges and Universities,
and
- 24) Howard Bicker, Executive Director, State Board of Investment.

8) In addition to the above Public Officials, there are a variety of occupational and licensing boards, regulatory boards, mediation bureaus, minority affairs counsels, and other commissions which act on behalf of state government and may perform core functions.

9) 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.

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

11) Jurisdiction in this action is based upon Chapter 484 of Minnesota Statutes. Venue is appropriate in this district under Minn. Stat. § 542.01 (2000).

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 the fiscal year beginning July 1, 2001.

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 six 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. Similarly, the State Treasurer has independent responsibility to protect government property by the receipt, care and disbursement of state monies. The State Auditor has independent responsibility to protect government property by auditing the books and records of the government. The Secretary of State has responsibility to protect private property by administration of the Uniform Commercial Code and to protect liberty through administration of the election laws. The Attorney General has responsibility to protect government property and preserve liberty and life through legal representation of the government.

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. 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.

16) 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;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

17) 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.

18) 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.

19) The Commissioner of Finance and the State Treasurer administer the payment of obligations of the State of Minnesota.

20) The State Treasury contains ample funds to continue the operation of the core functions of government after June 30, 2001.

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.

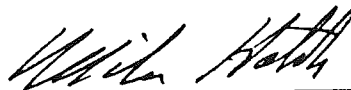
2) An Order that the Commissioner of Finance and the Minnesota State Treasurer shall issue checks and process such funds as necessary to pay for such obligations of the State of Minnesota.

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 and the State Treasurer, 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 20, 2001

Respectfully submitted,



MIKE HATCH
Attorney General
State of Minnesota

AG: 488696, v. 01

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In Re Temporary Funding of Core
Functions of the Executive Branch
of the State of Minnesota)
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Case Type: Civil

Court File No. _____

**MOTION FOR ORDER TO SHOW
CAUSE**

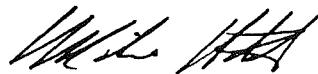
Petitioner Mike Hatch moves the Court for an Order to Show Cause to be served by mail upon the parties set forth in Exhibit A, giving each party notice of the Petitioner's request that core functions of the State of Minnesota continue to operate and be funded from July 1, 2001 until the earlier of the following:

- 1) July 23, 2001,
- 2) The enactment of appropriations by the State of Minnesota to fund government services after June 30, 2001, or
- 3) Further order of this Court.

The Petitioner requests that the Order to Show Cause state that the hearing on the Petition be held at 1:30 p.m. on Friday, June 29, 2001 before the Honorable Chief Judge Lawrence D. Cohen, at Courtroom 880 in the Ramsey County Courthouse, St. Paul, Minnesota.

Respectfully submitted,

Dated this 20th day of
June, 2001.



Mike Hatch
Attorney General
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St. Paul, MN 55155
(651) 297-4272