

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

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

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

On June 15, 2011, this Court issued an Order to Show Cause setting a hearing date of June 23, 2011 on the motion of Petitioner Lori Swanson, 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, 2011. Since then, various other submissions have been filed with the Court. 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 Lori Swanson is the Attorney General of the State of Minnesota and in that capacity she represents the public in all legal matters involving the State of Minnesota. She also represents the people of the State in a *parens patriae* capacity.

2. The regular session of the Minnesota Legislature ended on May 23, 2011. No legislation has been enacted appropriating funds for the executive branch officers and agencies (other than the Department of Agriculture, the Board of Animal Health and the Agricultural Utilization Research Institute) for the fiscal year beginning on July 1, 2011. Some functions of State government, however, have existing funding sources or standing statutory appropriations.

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

4. Due to the lack of appropriations, the five constitutional officers of the State of Minnesota and the executive branch agencies will have insufficient funds to carry out their core functions. The failure to properly fund core functions of the executive branch will violate the constitutional rights of the citizens of Minnesota.

5. In 2001 and 2005, the Attorney General petitioned this Court to preserve the operation of core functions of the executive branch of government after a budget was not enacted to fund state government. In those instances, this Court issued Orders providing for the continued performance of the core functions of the executive branch constitutional officers, and that the State continue to pay for such functions performed after July 1, 2001 and July 1, 2005, respectively. *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, C0-05-5928 (Ramsey Co. D.Ct., filed June 23, 2005); *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). In 2001 and 2005, the Court appointed a Special Master to assist in resolving issues relating to the Orders.

6. 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.

OMB Memorandum, *Agency Operations in Absence of Appropriations* (Nov. 17, 1981), available at http://www.opm.gov/furlough/OMBGuidance/Attachment__A-4.pdf (hereinafter “OMB Memorandum”).

7. Pursuant to the criteria referenced in paragraph 6 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.

OMB Memorandum.

8. The State of Minnesota has ample reserves at this time to fund core functions of the executive branch, and the executive branch could continue to operate core functions if it had access to those funds.

9. 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, 2011, the State will be unable to carry out these core functions. Such agreements and obligations involve, but are not limited to, the administration and payment of medical assistance, general assistance, and a variety of other programs designed to ensure the health, safety and welfare of Minnesota citizens.

10. Examples of the federal programs referenced in paragraph 9 include the following: the Supplemental Nutrition Assistance Program (referred to herein as 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); (d), (e)(2), (3) & (9); 42 U.S.C. § 602(a)(1), (4); 42 U.S.C. § 1396a(a)(9), (10). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(a)(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. The Department of Human Services is responsible under state law for administering the state programs relating to each of these three federal programs. *See* Minn.

Stat. §§ 245.771 (Food Stamp Program); 256J.02 (TANF Program); 256.01, subd. 2 (Medicaid Program). The Attorney General also has certain obligations under federal law (as well as state law) with respect to the Medicaid Program. *See, e.g.*, 42 U.S.C. § 1396b(q) (investigate and prosecute Medical Assistance fraud); Minn. Stat. § 256B.12 (original jurisdiction for Medicaid fraud).

11. The appointment of a Special Master will help promote judicial economy and efficiency. A Special Master creates an orderly process to resolve requests for, or objections to, funding, thereby preventing the necessity for multiple individual lawsuits to be filed and adjudicated. *See, e.g.*, Minn. R. Civ. P. 1 (rules of civil procedure shall be administered to secure just, speedy, and inexpensive determination of every action); Minn. R. Civ. P. 53.01 (authorizing appointment of special master). *See also* 9C Wright & Miller, Federal Practice and Procedure: Civil §§ 2602, 2602.1 (3rd ed. 2008) (discussing use of special master to facilitate effective and expeditious consideration of claims).

CONCLUSIONS OF LAW

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

2. This Court has jurisdiction over this matter in accordance with Minnesota Statutes Chapter 484, and venue is proper in this Court pursuant to Minnesota Statutes Section 542.01.

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.” However, the Minnesota Constitution also provides that each of the five executive branch constitutional officers specified in Article V, namely, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions

which are an inherent part of their offices. Article V, Section 1 “implicitly places a limitation on the power of the legislature” so that the core functions of the executive branch officers, and their performance of those functions, may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986). Failure to fund these independent core functions, even temporarily, nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution. *See* Minn. Const. art. III, § 1 (dividing the powers of government into three distinct departments); *Mattson*, 391 N.W.2d at 782 (holding that implicit limitation on legislative authority prevents abolishment “of the independent functions inherent in an executive office.”). *See also Clerk of Court’s Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 784 (Minn. 1976) (recognizing that “separation of powers becomes a myth,” if one branch of government could “effectively abolish” another).

4. The core functions of the executive branch arise from the state and federal constitutions, including the independent functions inherent in each executive office, *Mattson*, 391 N.W.2d at 782-83, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution. All constitutional officers take an oath to support the constitutions of the United States and the State of Minnesota and to discharge faithfully the duties of their constitutional offices. Minn. Const. art. V, § 6. Core functions include matters 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.

5. The Minnesota Constitution provides that “government is instituted for the security, benefit and protection of the people” Minn. Const. art. I, § 1. The Fourteenth Amendment to the U.S. Constitution and Article I, § 7 of the Minnesota Constitution guarantee

to the people the right of due process of law. These rights will be infringed if executive branch officers do not have sufficient funding to discharge their core functions as of July 1, 2011.

6. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, the Food Stamp Program, the Temporary Assistance to Needy Families Program, and the Medicaid 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, clause 2, mandates that any funds paid by the State as a result of participation in these federal programs must continue.

7. The core functions of the executive branch must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

ORDER

1. Minnesota state constitutional officers shall determine and perform their respective core functions of government as required by the Minnesota Constitution, the U.S. Constitution and federal law pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. The Commissioner of the Department of Management and Budget, Jim Schowalter, shall timely issue checks and process such funds as necessary to pay for the performance of the core functions of government as set forth in this Order.

3. The Honorable James Gilbert, Retired Associate Justice of the Minnesota Supreme Court, is hereby appointed as Special Master to hear and make recommendations to the Court, as necessary, regarding any issue raised by Petitioner or others relating to the application

of this Order. Such issues may also include the availability or applicability of existing funding sources or standing appropriations. The fees and expenses of the Special Master shall be paid by the State of Minnesota, the Commissioner of the Department of Management and Budget.

4. This Order shall be effective until the earliest of the following:
 - a. July 31, 2011, which may be extended by the Court;
 - b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2011; or
 - c. Further Order of this Court.

5. Petitioner shall serve by U.S. Mail a copy of this Order on the persons and entities who were served the Order to Show Cause dated June 15, 2011 and all other persons who have filed submissions in this proceeding.

BY THE COURT:

Dated: _____

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