

JUN 22 2011

By  Deputy

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. 62-CV-11-5203

**RESPONSE BY EIGHTY-SEVENTH MINNESOTA SENATE TO PETITION AND
REPLY**

The Minnesota State Senate submits this Response to the Petition of the Attorney General filed June 13, 2011, and Reply to the Response of the Governor to that Petition, filed June 15, 2011. This response is based on the files, records, and attached affidavit of the Chair of the Senate Committee on Rules and Administration, Senator Amy T. Koch.

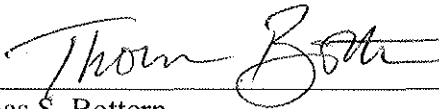
1. The Attorney General, Lori Swanson, initiated the above captioned action requesting the court to order that the State of Minnesota pay for services necessary to discharge the core functions of the executive branch of the State of Minnesota and to appoint a Special Master for purposes of hearing and making recommendations to the court regarding the core functions that should be funded.
2. Governor Mark Dayton submitted a response to the petition of the Attorney General requesting that the Court immediately appoint a mediator to oversee and facilitate negotiations between the legislative majority, on the one hand, and the legislative minority and the Governor, on the other, and to avoid any infringement by the judicial department on the constitutional powers of the legislative and executive departments by foregoing any other order for relief unless and until mediation fails.
3. The Minnesota Constitution, article III, vests the legislative power of the State of Minnesota in the Legislature and prohibits a member of another department (the executive or judicial departments) from exercising legislative powers, except as expressly authorized by the constitution.
4. The Minnesota Constitution, article XI, section 1, provides that "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Article IV, section 22, of Minnesota Constitution requires a majority vote of both houses of the Legislature to enact a law (with the concurrence of the governor, subject to override of the governor's veto by two-thirds majority vote by each house

of the Legislature). The spending requested by the petition of the Attorney General is not "in pursuance of an appropriation by law" as required by article XI, section 1, of the Minnesota Constitution.

5. The Governor's claim in his June 15, 2011, Response that he has "inherent power" to direct funding for "critical services," is not "in pursuance of an appropriation by law" as required by Article XI, Section 1, of the Minnesota Constitution.
6. Since the next Biennium does not begin until July 1, 2011, the Governor still has ample time and opportunity to call a Special Session to enact appropriations bills or to pass a temporary state government funding bill to allow additional time for negotiation.
7. The judicial branch does not have any specific or inherent authority under the Minnesota Constitution to order the executive and legislative departments to enter into mediation for purposes of enacting legislation appropriating money for the operations of the executive department. As a result, the court does not have authority to grant the relief requested by the Governor.

Dated: June 22, 2011

BY



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