

STATE OF MINNESOTA

IN SUPREME COURT

CASE NO. _____

In re Government Shutdown Litigation

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

CASE TYPE: Civil

In re Temporary Funding of Core
Functions of the Executive Branch
Of the State of Minnesota

Chief Judge Kathleen R. Gearin

Court File No. 62-cv-11-5203

STATE OF MINNESOTA

COUNTY OF SCOTT

DISTRICT COURT

FIRST JUDICIAL DISTRICT

CASE TYPE: Civil

Canterbury Park Holding Corporation, a
Minnesota company, and Minnesota
Horsemen's Benevolent & Protective
Association, Inc., a Minnesota company

Judge Diane M. Hanson

Court File No. 70-cv-11-13433

Plaintiffs,

v.

State of Minnesota and Jim Schowalter,
Commissioner of Minnesota Management
& Budget,

Defendants.

STATE OF MINNESOTA

COUNTY OF DAKOTA

Minnesota Zoological Gardens,

Plaintiff,

v.

Office of Minnesota Management &
Budget,

Defendant.

STATE OF MINNESOTA

COUNTY OF ANOKA

Minnesota Harness Racing, Inc., and
North Metro Harness Initiatives, LLC,
d/b/a Running Aces Harness Park,

Plaintiffs,

v.

State of Minnesota and Jim Schowalter,
Commissioner of Minnesota Management
& Budget,

Defendants.

DISTRICT COURT

FIRST JUDICIAL DISTRICT

CASE TYPE: Civil

Judge Jerome B. Abrams

Court File No. 19HA-cv-11-3622

DISTRICT COURT

TENTH JUDICIAL DISTRICT

CASE TYPE: Civil

Judge Donald J. Venne

Court File No. 02-cv-11-4462

**CANTERBURY PARK HOLDING CORPORATION'S
RESPONSE TO EMERGENCY MOTION OF THE GOVERNOR TO
CONSOLIDATE AND TO STAY PROCEEDINGS
PENDING CONSOLIDATION**

INTRODUCTION

In the early morning hours of Thursday, June 30, 2011 Movant Governor Mark Dayton (the "Governor") asked this Court to consolidate cases related to the statutory construction of standing or ongoing appropriations and these statutes' relationship to Minnesota Constitution Article XI, Section 1 with the Ramsey County case captioned *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*. For the reasons stated below, Respondent Canterbury Park Holding Corporation (Canterbury Park) respectfully requests that this Motion be denied.

ARGUMENT

As an initial matter, Respondent sees no reason for the Governor to have standing in this action. As the Movant states, Minn. R. Gen. Prac. 113.03 "The Minnesota Rules of Practice for the district courts allows a **party** to move the Chief Justice of the Minnesota Supreme Court... ." (Motion, p. 7 (emphasis added).) The Governor is not a party to the action in Scott County, Anoka County or Dakota County. While Canterbury Park in the Scott County matter does name Jim Schowalter, as the Commissioner of Minnesota Management & Budget (MMB), as a Defendant, it is the Attorney General's role to represent commissions and commissioners. See Minn. Stat. § 8.06 (2010). The Attorney General is a constitutional officer elected to perform separate functions from the Governor under Minnesota Constitution Article V, Section 1.

The Attorney General appeared for the State at the June 29, 2011 hearing in the *Zoo Case* and is expected to appear in the Scott County matter. The Attorney General has not joined this Petition and from that failure to join this Court can draw the inference that the injuries Petitioner claims were not considered to be sufficient by the responsible constitutional officer.

Neither the Governor nor this Court has the authority to interfere with the discretion of the Attorney General in this matter.

The attorney general is the chief law officer of the state. [Her] powers are not limited to those granted by statute but include extensive common-law powers inherent in his office. [She] may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights. [She] is the legal adviser to the executive officers of the state, and the courts will not control the discretionary power of the attorney general in conducting litigation for the state.

Slezak v. Ousdigian, 260 Minn. 303, 308, 110 N.W.2d 1, 5 (1961), *overruled on other grounds by Christensen v. Minneapolis Mun. Employees Ret. Bd.*, 331 N.W.2d 740 (Minn. 1983). The Attorney General's appearances in these actions demonstrate the position that the matters at issue are distinct and separate from those heard by Judge Gearin.

There is a substantial difference between the cases pending in the other counties from the case that was decided by Judge Gearin in Ramsey County. In *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, the issue was, as the name implies, the core services of government. Canterbury Park was not a part of that case and has never asserted that the Minnesota

Racing Commission is a core service or essential function of the executive branch. The Horsemen's Benevolent & Protective Association ("HBPA") did file a Motion to Intervene in the Ramsey County action in order to protect its interests, if the court extended the issues beyond core functions of the executive branch, but Judge Gearin's Order was confined to core functions and essential services. The Governor, in his moving papers, casts the impression that the Scott County action is a "second bite at the apple" for the Plaintiffs, but this is not true. Canterbury Park, as stated above, was not a party in the Ramsey County action and the HBPA will be withdrawing as a party in the Scott County action. Therefore, this is not a case where the Scott County Court risks issuing a divergent or conflicting ruling.

Beyond the issue of differing parties, the substance of the Scott County matter is also different from that which was heard by Judge Gearin. In Scott County, Canterbury Park is seeking a temporary restraining order requiring that the MMB remit or cease impeding funds that were previously appropriated through Minn. Stat. § 240.155, subd. 1. The result of this would be to allow the Minnesota Racing Commission to continue operations irrespective of any determination of core function status. Canterbury Park argues that the Minnesota Racing Commission's funding was already the subject of legislative and executive action; it is provided for by statutes that were enacted into law through the normal legislative process and signed by the Governor. *See*, Minn. Stat. § 240.01 *et seq.* This comprehensive statutory scheme requires Canterbury Park (and other license holders) to fund the Minnesota Racing Commission. As part of this

statutory scheme, there exists a standing appropriation that provides sufficient funds to continue the current operation of the MRC.

Money received by the commission as reimbursement for the costs of services provided by veterinarians, stewards, and medical testing of horses must be deposited in the state treasury and credited to a racing reimbursement account, except as provided under subdivision 2. Receipts **are appropriated** to the commission to pay the costs of providing the services.

Minn. Stat. §240.155 (emphasis added); *see also*, Minn. Stat. § 240.15, subd. 6 (that “all revenues from licenses and other fees imposed by the Commission must be deposited in the State Treasury and credited to a racing and card playing regulation account in a special revenue fund.”) It was not in Judge Gearin’s purview to determine whether or not prior appropriations were constitutionally valid, a principle that Canterbury Park considers to be self-evident, and she did not do so.

Timing is critical for Canterbury Park. With a government shutdown scheduled for less than 18 hours from the time of this response, Canterbury Park simply has no other opportunity to be heard.¹ **Consolidation is the equivalent of dismissal.** In its moving papers for the temporary restraining order, Canterbury Park listed several factors that would result in immediate and irreparable harm should the temporary restraining order not be granted. (Affidavit of Gary K. Luloff, Ex. A.) Most notably, many small private businesses will be damaged or destroyed by the consolidation of the Scott County matter in Ramsey County, and Canterbury Park will be deprived of the

¹ If this Court orders consolidation before Judge Gearin, it should require that she immediately conduct a hearing **today**, before the government shutdown at midnight tonight, to avoid irreparable harm to Canterbury Park.

regulatory services for which it has directly contributed over \$1.2 million in the last year.

The Governor states that Mr. Schowalter is currently working 18 hour days, and that adding these, and potentially other, actions to his plate would be an undue burden. But the Governor cannot demonstrate any **immediate** emergency need for consolidation on this basis, as neither he nor Mr. Schowalter will be required to participate in **today's** scheduled hearings. If consolidation is appropriate, these cases can be transferred under the normal process, with the status quo maintained and the only parties subject to actual emergencies having been given their day in court. At this point there are three cases that do not require any immediate time or effort from the Governor or Mr. Schowalter, rendering the balance of harms for granting or denying this motion clearly favoring Canterbury and the other Plaintiffs.

A judgment from the Honorable Diane Hanson, District Court Judge of Scott County, will result in no damage to the agency and even more relevant to this motion, to the Governor. Canterbury Park seeks a release of funds held in a special revenue account for which there is no other legal purpose. The Minnesota Racing Commission is funded and can continue to operate. Canterbury Park, in its moving papers, addressed the question of harm to the State and to the Commissioner should the temporary restraining order be granted and accepts that a bond is the proper vehicle to protect the Commissioner from any potential harm that the temporary restraining order may cause.

CONCLUSION

Canterbury Park Holding Corporation has initiated an action in Scott County, the venue where the effects of the government's action occur, seeking a determination that the Minnesota Racing Commission will continue to provide the regulatory services for which Canterbury Park has already paid over \$1.2 million of licenses, taxes, and fees under Chapter 240. The Attorney General has joined this action on behalf of the State and the Commissioner, as is proper, and any harm that may befall Defendants in that action, should a temporary restraining order be granted, can be covered through the normal process of an injunction bond. Therefore, Canterbury Park respectfully requests that this Court deny the Motion for Consolidation and allow the immediate hearing of Canterbury Park's emergency motion in Scott County.

Dated: June 30, 2011

CHESTNUT CAMBRONNE PA

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