

STATE OF MINNESOTA
IN SUPREME COURT

No. A11-1222

State Senator Warren Limmer, State
Senator Scott J. Newman, State Senator
Sean R. Nienow, State Senator Roger C.
Chamberlain, State Representative Glenn
H. Gruenhagen, and State Representative
Ernest G. Leidiger,

Petitioners,

vs.

**RESPONDENT ATTORNEY
GENERAL'S MEMORANDUM IN
RESPONSE TO PETITIONERS'
MEMORANDUM**

Lori Swanson, in her official capacity as
Attorney General, Mark Dayton in his
official capacity as Governor, Jim
Schowalter in his official capacity as
Commissioner of Department of
Management and Budget, and Kathleen R.
Gearin in her official capacity as Chief
Judge of the Ramsey County District
Court,

Respondents.

FACTUAL BACKGROUND

On July 8, 2011, Petitioners filed with this Court a petition for a writ of *quo warranto*. The Petition challenges, *inter alia*, the Ramsey County District Court's authority to order expenditures in the absence of appropriations.

On July 19 and 20, 2011, the legislature passed appropriations bills to fund state government. The Governor signed the bills into law on July 20, 2011. *See* Act of July 20, 2011, 1st Spec. Sess., ch. 1, art. 1 (judiciary and public safety); ch. 2, arts. 1-3

(environment, energy and commerce); ch. 3, art. 1 (transportation); ch. 4, art. 1 (jobs and economic growth); ch. 5, art. 1 (higher education); ch. 6, arts. 1-4 (legacy); ch. 9, art. 10 (health and human services); ch. 10, arts. 1-2 (state government, innovations and veterans); ch. 11, art. 11 (education). The bills contain the following provision:

Unless otherwise specified, this article [or act] is effective retroactively from July 1, 2011, and supersedes and replaces funding authorized by order of the Second Judicial District Court in Case No. 62-CV-11-5203.

See Act of July 20, 2011, 1st Spec. Sess., ch. 1, art. 1 § 19; ch. 2, art. 1, § 9, art. 2, § 11, art. 3, § 3, art. 4, § 37, art. 5 § 71; ch. 3, art. 4, § 1; ch. 4, art. 4 § 1; ch. 5, art. 1, § 8; ch. 6, art. 5, § 10; ch. 9, art. 11, § 1; ch. 10, art. 5, § 2; ch. 11, art. 13, § 1.

In response to the Court's Order of August 30, 2011, Petitioners have filed a Memorandum arguing that the Court should decide this matter because the circumstances of this case are excepted from the mootness doctrine.

DISCUSSION

Excepting a case from the mootness doctrine necessarily involves a decision that is uniquely within the Court's discretion, *i.e.*, to determine whether to exercise its jurisdiction over an issue that is not otherwise justiciable. To assist the Court in making this determination, the Attorney General files this Memorandum to ensure that the Court is apprised of relevant information and considerations that were not addressed in Petitioners' Memorandum.

A. The Mootness Doctrine.

In a situation involving the shutdown of the federal government, a federal court dismissed as moot a challenge to payments made to federal employees during a budget

impasse. See *American Federation of Government Employees v. Rivlin*, 995 F. Supp. 165 (D.D.C. 1998). The court reasoned, in part, that “[i]t would be entirely speculative for this Court to attempt to predict if, and when, another lapse in appropriations may occur, how long that lapse might be, which agencies might be subject to the lapse, which employees might be affected and whether employees will be required to work without pay.” *Id.* at 166 (discussing exception to mootness doctrine).

The shutdown experience in Minnesota has been as follows. In 2001 there was no actual shutdown. In 2005, most of the budget bills had passed by July 1 and the shutdown of the remaining agencies lasted eight days. In 2011, virtually no appropriations bills were enacted by July 1, and the shutdown lasted for about three weeks. As a result of the 2011 shutdown, a bill is planned to be introduced in the next legislative session that would provide for continued funding of state government in the absence of a budget. See <http://www.startribune.com/politics/statelocal/125989193.html>.

B. The Court’s Original Jurisdiction Over This Matter.

This Court’s original jurisdiction over a *quo warranto* petition can be invoked “in only the most exigent of circumstances.” *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992) (stating “petitions for the writ of quo warranto and information in the nature of quo warranto shall be filed in the first instance in the district court.”). The Court issued its Order for briefing on the merits prior to resolution of the budget impasse. See Court’s Order of July 11, 2011.

C. *Quo Warranto* As An Appropriate Remedy.

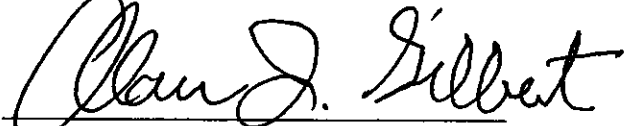
Quo warranto is an appropriate remedy in cases where a public official has absolutely no authority to perform the subject act. *See, e.g., State ex rel. Grozbach*, 237 Minn. 150, 153, 54 N.W.2d 130, 133 (1952). Petitioners do not claim that Respondents were absolutely without authority or jurisdiction to perform the challenged acts. *See* Petition for Writ of *Quo Warranto*, dated July 8, 2011, at pp. 41-48.

In addition, the remedy does not apply to review government conduct that has been completed. *See, e.g., State ex rel. Lommen v. Gravlin*, 209 Minn. 136, 137, 295 N.W. 654, 655 (1941) (“writ of quo warranto is not allowable as preventative of, or remedy for, official misconduct and can not be employed to test the legality of official action of public . . . officers.”). *See also State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 320 (Minn. Ct. App. 2007) (“What the legislators seek, in essence, is not a writ to correct an ongoing usurpation of power but a declaration that the judiciary lacks the power to authorize an executive officer to disburse funds without an appropriation by law. *Quo warranto* is not an appropriate action to attempt to obtain this relief.”).

Dated: October 17, 2011

Respectfully submitted,

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AFFIDAVIT OF SERVICE BY U.S. MAIL

Re: *State Senator Warren Limmer, et al. v. Lori Swanson, et al.*
Court File No. A11-1222

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

BARBARA J. FEHRMAN, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on October 17, 2011, she caused to be served the *Respondent Attorney General's Memorandum in Response to Petitioner's Memorandum*. All documents were served by depositing the same in the United States mail at said city and state, true and correct copies thereof, properly enveloped with prepaid first class postage and addressed to:

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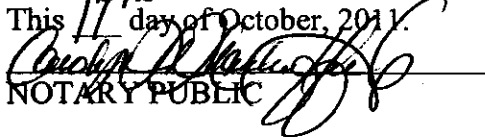
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BARBARA J. FEHRMAN

Subscribed and sworn to before me on

This ^{14th} day of October, 2011.


NOTARY PUBLIC

