

OFFICE OF THE RAMSEY COUNTY ATTORNEY

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Civil Division

July 5, 2011

To: Special Master Kathleen Blatz, Second Judicial District
From: Victoria Reinhardt, Commissioner on behalf of Ramsey County Board of Commissioners
C: County Manager Julie Kleinschmidt; Deputy County Manager Heather Worthington; County Attorney John J. Choi
Re: Continued Funding Requests before the Special Master

Attached please find Ramsey County's request for determination of critical or essential services and funding. We have prepared this report in coordination with our county departments, and based it on a thorough legal review of Judge Kathleen Gearin's ruling in Ramsey County District Court.

We believe Judge Gearin has ruled on most of these matters. However, we are seeking clarification on a number of issues where we have received contradictory direction from state agencies, or where the agency interpretation differs from the Judge's ruling.

Ramsey County's requests are being split into two sections based on the issues raised:

1. Public Works and Human Services:

Public Works and Human Services include funds that are primarily federal, but include some state funding. For Public Works, all of the state funding has been previously appropriated or is a continuing appropriation based on ongoing formulas. For Human Services, these are critical services that are funded by programs that were authorized by Judge Gearin, but Dept. of Human Services has not agreed to fund the sub-programs.

Importantly, a more immediate need for Public Works is MnDOT's implied revocation of access to state highway Right-of-Way. While no MnDOT staff or funding is required for Ramsey County to continue construction in its ROW, and we have agreements granting us access, MnDOT has threatened action if the County were to trespass.

Please note, we have split the Human Services issue into two areas - Emergency Services and Child Care Licensing Actions. Emergency Services will only be briefly discussed, as it was also covered adequately during the SMRLS hearing on July 1, 2011.

2. Corrections and Public Health:

The Corrections Public Health services are mandated state programs that involve public security, safety and health. Similar state programs were authorized as programs of the state, but the funding for county level programs has not been recognized by the State.

Public Works

DESCRIPTION:

Ramsey County has numerous road projects proceeding. Two projects have significant issues in coordination with MnDOT, and are included in this request to the Special Master.

WHITE BEAR AVE-RADATZ to I-694 ROAD CONSTRUCTION - This project is scheduled for completion in November 2011. Significant backup of traffic as far back as the mainline through lanes on I-694 has resulted because of the construction. Completion of the project requires work on the State Right of Way, but MnDOT has rescinded its grant of authority to access the MnDOT Right of Way. If the project is delayed further into winter, the safety risk increases due to weather conditions. Federal and state funds have already been appropriated. It is not reasonable to leave projects with compromised safety conditions longer than necessary to complete construction activities.

TH36/RICE STREET RECONSTRUCTION - This project is ongoing, and includes significant work both within and outside of the state Right-of-Way (ROW). While the project could continue with work outside of the state ROW, MnDOT has unilaterally ordered the project discontinued during the shutdown. Funding for the project has already been received, and could continue with only minimal intrusion into the ROW for critical repairs and due to unexpected problems.

REQUESTED ACTION:

Declare access to MnDOT Right-of-Way does not require Legislative Action or Agency Discretion, and therefore is not subject to the shutdown and must continue pursuant to existing ROW agreements. Also, the County seeks to clarify that Commissioner of DMB is required to continue to make payments of federal funds and those state funds that have already been appropriated and allocated. Further clarify that funds already distributed to, and received by, local governments may be distributed regardless of shutdown status of state.

Service or Program	Funding Source	Basis for Funding	Explanation
Reimbursement for costs and expenses	Federal Surface Transportation Plan	Paragraph 11 of Order	MnDOT has warned that expenses incurred during shutdown will not be reimbursed. Instead of claiming that it does not have staff to process requests, the State is saying that it may not honor the funds that have already been identified. For federal pass-through funds, the Court has clearly identified that they are not subject to the shutdown. On the other hand, CSAH funds are allocated by a statutory formula, similar to the funding of LGA, and have already been appropriated. Ramsey County requests an order clarifying that availability of federal highway funds and CSAH funds already allocated to specific projects are
		Priority 1 Critical Services, Category 1.3	
		Supremacy Clause of the US Constitution	
	Payment of funds already lawfully appropriated		
County State Aid Highway Funds	County State Aid Highway Funds	Priority 1 Critical Services, Category 1.3	
		Decision in MN Zoo motion	

		Payment of funds which does not require Legislative action or Departmental discretion, and would be available to the County if not for shutdown.	not affected by the failure of the state to enact a budget.
	Trunk Highway / Metro Interchange Funds	Category A. Priority 1 Critical Services, category 1.3 Decision in MN Zoo motion Payment of funds which does not require Legislative action or Departmental discretion, and would be available to the County if not for shutdown.	Finally Trunk Highway/Metro Interchange Funds have already been allocated and distributed. While funds that are not expended on the project must be refunded, there is no existing requirement that the allocation of costs against these funds requires any state action.
Staffing of agency offices to provide for payment of reimbursement requests	State Appropriation as Critical Core Function	Paragraph 11 of Order Category A. Priority 1 Critical Services, category 1.3 Supremacy Clause of the US Constitution Payment of funds already lawfully appropriated Priority 1 Critical Services, Category 1.3 Priority 2 Critical Services, Category 2.1 Payment of funds for which the formula for distribution does not require Legislative action or Department discretion	As described above, the funds associated to these projects are already identified and have been appropriated. The issuance of payment of reimbursements is simply a ministerial task to fulfill the obligation under the Supremacy clause, and to fund critical core services. Processing these requests do not depend on substantial support from state resources. However, non-performance of contract could result in contractual damages, increased costs, and deterioration of site requiring additional costs.
Right-of-Way Access and Authorization to Proceed	None	Priority 1 Critical Services, Category 1.3 Priority 2 Critical Services, Category 2.1 No funds will be expended or encumbered on behalf of state Judge LaDuc decision in Koochiching logging injunction	MnDOT has unilaterally canceled access to State Right-of-Way for Ramsey County to continue construction. MnDOT claims the failure of state to enact a budget prevents the state from honoring these ROW agreements. Providing access to the state highway Right-of-Way does not encumber any state funds. Ramsey County has alternative sources to replace state inspectors, and can obtain materials that meet state certification standards. Agreements are existing prior to shutdown, and have adequate protections for the state.

Community Human Services – Emergency Assistance

DESCRIPTION:

These are programs that provide safety and basic need benefits. Virtually all funds are expended to prevent families or adults from becoming homeless or fund families and adults to secure housing. The vast majority of funds are for rent, security deposits and utility payments.

REQUESTED ACTION:

Clarify that Judge Gearin’s July 29, 2011 Order providing for continued funding of Medicaid, MFIP/DWP, General Assistance and Minnesota Supplemental Aid, and related programs, includes subprograms serving these communities and funded through the same sources.

Core Service	Funding Source	Basis for Funding	Explanation
<ul style="list-style-type: none"> • Emergency Assistance • Emergency General Assistance • Emergency Minnesota Supplemental Aid 	<p>EA is funded through TANF and the MFIP Consolidated Fund</p> <p>EGA and EMSA are funded through state bi-annual budget for GA and MSA</p>	<p>Finding 17 which continues funds to “protect life and property” and which include “benefit payments in the performance of contract obligations.” Finding 24 includes TANF as example of Finding 17.</p> <p>Finding 18 which continues funds for “continued public health and safety.”</p> <p>Inclusion in Exhibit A</p> <p>Supremacy clause</p>	<p>TANF, MFIP, GA and MSA have all been continued through the July 29 Order. These are the sources of all funds included in this request.</p> <p>DHS has stated that the MFIP Consolidated Fund would not continue as it is a payment to counties, despite its inclusion of federal TANF funds. Counties allocate MFIP CF funding to support financial workers to pay for employment services and for EA. EA payments, once approved under county policy, directly benefit the eligible family, and are not made to counties. Rather payments go to landlords and utility companies.</p> <ul style="list-style-type: none"> • EA Impact: 378 Households / \$520,000 • EGA Impact: 191 Households / \$210,000 • EMSA Impact: 26 Households / \$14,000

Community Human Services – Child Care Licensing Suspension Administration

DESCRIPTION:

Child care homes are licensed by the State of Minnesota. Counties perform the majority of the administrative work for the State, including investigations. Counties recommend to the Minnesota Department of Human Services (DHS) licensing actions such as issuance, revocation, and temporary immediate suspensions. DHS has closed all licensing functions because of the state shutdown. Included are revocation and temporary immediate suspensions (TIS) of licensing. Ramsey County requests that DHS be instructed to provide the administrative and legal capability to carry out its statutory responsibility for carrying out negative licensing actions, more specifically Temporary Immediate Suspensions (TIS). TIS is recommended to DHS only in circumstances when the county believes there is imminent risk of harm. Examples include physical abuse, sexual abuse, and leaving children unattended. DHS normally responds to a county TIS request on the same or next day after the request. When TIS is ordered, it is hand delivered and takes effect immediately due to the risk of imminent harm.

RAMSEY COUNTY IMPACT:

In the past 6 weeks, Ramsey County has requested and received 2 TIS of child care licenses for homes where a child was severely burned (the victim experienced 2nd and third degree burns over approximately 20% of her body and will require skin grafting) and a child had large amount of hair pulled out (the victim shows a patch of missing hair larger than a golf ball). Ramsey County has sent 7 negative action recommendations to DHS for conditional licenses, revocations and TIS on child care licenses since January. We cannot predict when this action will be warranted.

BASIS FOR REQUEST:

Ramsey County considers the issuance of TIS to be a critical core service, one that immediately preserves the health and safety of children. Other remedies available to the county include going to court for a court order closing a child care home. While this may be possible, it will likely not be expeditious since it involves the county staff and the legal system in ways they are normally not involved.

Core Service	Funding Source	Basis for Funding	Explanation
Child care license suspension administration	State Bi-annual Funding	Critical Core Service. Health and Safety. June 29 Order, finding 27 "maintenance of public safety" and "necessary administration and support services"	Ramsey County must be authorized to act to protect the health and safety of children in childcare facilities. Regulation and licensing of day care facilities assures the public that these facilities are safe for the children cared for in that facility. While counties investigate all reported issues of safety or neglect at these facilities, only DHS can suspend the license of those facilities. If the department cannot suspend the license of unsafe facilities, counties are powerless to prevent unsafe facilities from continuing to operate and accept new children for care.

Corrections

DESCRIPTION:

Under the Community Corrections Act (M.S. 401), Ramsey County Community Corrections is required to deliver direct community supervision of offenders living in Ramsey County. This supervision is similar to the services provided by the Minnesota Department of Corrections and which was funded under Judge Gearin's July 29 Order. The Community Corrections Act Subsidy from the Minnesota Department of Corrections provides the funding necessary for adequate direct supervision of these offenders residing in Ramsey County. It is our position that if direct community supervision has been deemed a critical service for the Minnesota Department of Corrections, then the funding to provide direct community supervision to offenders should likewise be deemed a critical function for the counties that deliver it.

REQUESTED ACTION:

Clarify that funding for Community Corrections Act programs similar to those authorized under the July 29, 2011 Order are critical core services that must be funded during the current shutdown.

Core Service	Funding Source	Basis for Funding	Explanation
Community Corrections Act Subsidy	Community Corrections Act (M.S. 401)	Critical Core Service. Health and Safety. June 29 Order. Exhibit A	The loss of this funding will severely impact the number of probation officers available to supervise offenders, including 700 high risk offenders who have recently been released from prison and 2200 high risk probationers. This will result in significantly higher caseloads and the movement of high risk offenders into low risk units. Ramsey County impact: \$5,934,407 annually

Public Health

DESCRIPTION:

The Local Public Health Act (Minn. Stat. 145A.04, subd 6) requires city and county boards of health to “make investigations and reports and obey instructions on the control of communicable diseases as the commissioner may direct under section 144.12, 145A.06, subdivision 2, or 145A.07. Boards of Health must cooperate so far as practicable to act together to prevent and control epidemic diseases.” This funding is critical to the communicable disease activities mandated in state law that are designed to protect the public health of Minnesotans.

REQUESTED ACTION:

Clarify that Maintenance of public safety and immediate public health concerns are recognized as critical core functions of government.

Core Service	Funding Source	Applicable sections of Order requiring clarification	Explanation
Local Public Health Grant	Local Public Health Act (M.S. 145A) is funded through state bi-annual funding.	County receives \$250,000 monthly for the Local Public Health Care Grant. These funds support core public health services.	<p>At the city and county level, the Local Public Health Block Grant is the primary source of funding available for communicable disease prevention, investigation, and response activities. It covers critical functions in the following areas:</p> <ul style="list-style-type: none"> • Disease investigation and control to fund epidemiologists and support staff involved in disease surveillance and the investigation of outbreaks of communicable diseases • Tuberculosis Control Clinic at 555 Cedar. The clinic serves patients with both active and latent tuberculosis disease • Clinical Services, including immunization, STD and Refugee health clinics at 555 Cedar. These clinics provide essential health services to individuals who would otherwise be unable to afford healthcare.