

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota ex rel. Robert W. Mattson,
Treasurer of the State of Minnesota,

Petitioner,

vs.

Peter J. Kiedrowski, Commissioner
of Finance of the State of Minnesota,

Respondent.

RESPONDENT'S APPENDIX

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Commissioner of Finance of
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PETITION
FOR
WRIT OF QUO WARRANTO
AND MEMORANDUM OF LAW

TO: The Supreme Court of the State of Minnesota:

Relator Robert W. Mattson, Treasurer of the State of Minnesota, respectfully petitions the Supreme Court of the State of Minnesota to issue a writ of quo warranto to respondent Peter J. Kiedrowski, Commissioner of Finance, requiring him (1) to show by what constitutional authority he is usurping and exercising the fundamental powers of the Treasurer; or (2) in the absence of such showing, to cease and desist usurping and exercising the fundamental powers of the Treasurer and to transfer back to the Treasurer:

- care and custody of the state Treasury;
- at least \$422,000 for Treasury management for each year of the 1986-87 biennium from amounts appropriated to the Commissioner of Finance and any amounts in excess of \$422,000 appropriated in either year for Treasury management; and

Section 13 purports to reduce the Treasurer's approved complement of positions from twenty for the 1984-85 biennium to two full-time employees, one part-time employee and the Treasurer for the 1986-87 biennium, a nearly ninety percent reduction in employees. Compare 1985 Minn. Laws ch. 13, § 13 (Spec. Sess.) with 1983 Minn. Laws ch. 301, § 12(1). Nine of the positions were included in the Finance Department's Personnel complement, 1985 Minn. Laws ch. 13, § 19(1) (Spec. Sess.).

Chapter 13 further strips the Treasurer of his authority to appoint a deputy and a personal secretary, a privilege accorded to every other constitutional officer of the state and one accorded to the Treasurer since late in the nineteenth century. 1985 Minn. Laws. ch. 13, § 376 (Spec. Sess.) (repealing Minn. St. 7.02 (1984)).

Further, section 13 reduces the appropriation for the Treasurer's office by nearly seventy-five percent to \$162,600 for the year ending June 30, 1986 and \$163,700 for the year ending June 30, 1987 compared to \$612,400 and \$584,600 for the previous biennium. Compare 1985 Minn. Laws ch. 13, § 13 (Spec. Sess.) with 1983 Minn. Laws ch. 301, § 12.

Section 95 purports to empower the Commissioner of Finance to "receive and record all money paid into the state treasury and safely keep it until lawfully paid." 1985 Minn. Laws ch. 13, § 95 (Spec. Sess.).

Sections 103, 107, 300 and 366 each purport to transfer from the Treasurer to the Commissioner of Finance the power to receive and keep state money.

Section 376 repeals sections 7.01, 7.02, 7.03, 7.04, 7.13 through 7.18, 16A.42(3), 69.031(2), 349.212(3), 360.302 and 360.306 of the 1984 Minnesota Statutes, all of which relate to the Treasurer's fundamental constitutional powers and duties of receipt, care, custody and disbursement of the state's monies.

Acting under the color of authority purportedly granted by the above described provisions of Chapter 13, the Commissioner of Finance has assumed responsibility for the receipt, care, custody and disbursement of the state's monies.

Relator contends that the above provisions of Chapter 13 are unconstitutional for three independent reasons:

- (1) The legislature does not have the power to eliminate the constitutional office of Treasurer, transfer the Treasurer's fundamental constitutional powers and duties to others and to prevent the Treasurer from carrying out his fundamental constitutional powers and duties,
- (2) The provisions, which virtually eliminate the constitutional office of Treasurer, are one subject among multiple subjects embraced within Chapter 13 in violation of Article IV, section 17 of the Minnesota Constitution which provides: "No law shall embrace more than one subject which shall be expressed in its title," and
- (3) The title of Chapter 13 does not express that Chapter 13 contains provisions to virtually eliminate the

office of Treasurer and transfer the Treasurer's fundamental constitutional duties to the Commissioner of Finance.

ARGUMENT

1. Original Jurisdiction in The Supreme Court

The Minnesota Supreme Court has "original jurisdiction in such remedial cases as are prescribed by law." Minn. Const. art. VI, § 2. Section 480.04 provides:

The [supreme] court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes, whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice. It shall be always open for the issuance and return of such writs and processes and for the hearing and determination of all matters involved therein

Minn. Stat. § 480.04 (1984).

In the past this court has exercised its original jurisdiction in quo warranto proceedings to determine the right to an office which turned on the scope of a constitutional officer's constitution-granted power or the constitutionality of a legislative act. E.g., State ex rel. Palmer v. Perpich, 289 Minn. 149, 182 N.W.2d 182 (1971); State ex rel. Douglas v. Westfall, 85 Minn. 437, 89 N.W. 175 (1902); State ex rel. Getchell v. O'Connor, 81 Minn. 79, 83 N.W. 498 (1900); State ex rel. Douglas v. Ritt, 76 Minn. 531, 79 N.W. 535 (1899).

The rule appears to be that this court will exercise original jurisdiction in quo warranto proceedings brought by the Attorney General in his ex officio capacity. State ex rel. Danielson v.

Village of Mound, 234 Minn. 531, 538-39, 48 N.W.2d 855, 861 (1951); State ex rel. Young v. Village of Kent, 96 Minn. 255, 269-72, 104 N.W. 948, 954-55 (1905); State ex rel. Bell v. Moriarity, 82 Minn. 68, 84 N.W. 495 (1900); State ex rel. Clapp v. Minnesota Thresher Manufacturing Co.; 40 Minn. 213, 41 N.W. 1020 (1889); State ex rel. Hahn v. St. Paul & S. C. Ry., 35 Minn. 222, 223, 28 N.W. 245, 246 (1886).

This proceeding is much the same as a proceeding brought by the Attorney General in his ex officio capacity. It is brought by the Treasurer in his ex officio capacity. The Attorney General is required to act as attorney for the Treasurer. Minn. Stat. § 8.06 (1984). In this case the Attorney General has appointed special counsel pursuant to section 8.06 to represent the Treasurer in a legal challenge to the provisions of Chapter 13 of the 1985 Minnesota Special Session Laws affecting the Treasurer.

The public interest factors which compel this court to exercise original jurisdiction in quo warranto proceedings brought by the Attorney General in his ex officio capacity are present in this proceeding. This case involves the constitutional duties of an elected state officer. His constitutional duties are being performed daily by an appointed official, in violation of the constitution. The State Treasurer is prevented from performing his constitutional duties.

The issues in this proceeding are purely legal, constitutional questions. They are important constitutional questions

which must be finally decided in this court. Judicial economy dictates the exercise of original jurisdiction.

In a nearly identical case, the New Mexico Supreme Court determined that original mandamus jurisdiction should be exercised notwithstanding their precedents against such original jurisdiction:

Before proceeding to the merits, we will dispose of respondents' contention that mandamus is not a proper remedy by which the petitioner can attack the constitutionality of the statute involved. Admittedly, there are cases which have denied mandamus where the petitioner sought to have a statute declared unconstitutional, and there are general statements in both the cases and the texts that seem to sustain this view. On the other hand, this court has not insisted upon such a technical approach where there is involved a question of great public import. ...

It is our opinion under the circumstances of this case that mandamus is proper in view of the possible inadequacy of other remedies and the necessity of an early decision on this question of great public importance.

Thompson v. Legislative Audit Commission, 79 N.M. 693, 694-95, 448 P.2d 799, 800-01 (1968).

2. Constitutional Duties of Executive Officers

Article III, section 1 of the Minnesota Constitution provides:

The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Article V, section 1 of the constitution provides:

The executive department consists of a governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general, who shall be chosen by the electors of the state. The governor and lieutenant governor shall be chosen jointly by a single vote applying to both offices in a manner prescribed by law.

Article V, section 4 of the constitution provides:

The term of office of the secretary of state, treasurer, attorney general and state auditor is four years and until a successor is chosen and qualified. The duties and salaries of the executive officers shall be prescribed by law.

The sole issue in this proceeding is whether the second sentence of article V, section 4, which provides that the duties of the executive officers shall be prescribed by law, permits the legislature to enact legislation which virtually eliminates the office of any of the six executive officers who comprise the executive department of state government; either by (1) so limiting the appropriations available to any of those executive officers as to prevent them from performing the duties which the constitution intends they shall perform, or (2) by transferring to others the authority to perform those duties.

It is clear that the legislature has no such power.

The legislation that is the subject of this proceeding relates to the constitutional office of State Treasurer. The constitutional issue involved, however, is applicable equally to all six constitutional offices of the executive department.

The constitution only sparsely describes the duties of the governor. The primary responsibilities which we historically attribute to the Secretary of State, Auditor, Treasurer and Attorney General are nowhere to be found in the Minnesota Constitution.

Are we to assume that the framers of our constitution intended nothing more than that the executive department of state

government should consist of a governor with limited specified powers and five others to whom the legislature might assign such duties as it saw fit, or none at all? Are we to assume that the legislature might assign to the auditor the duty of providing legal representation for the state?

The framers of the constitution knew the difference between an Attorney General and an Auditor, and they knew what a Treasurer was. When they selected the titles for the officers of the executive department, those titles were intended to have some meaning. Any other conclusion would grant virtually unlimited power to the legislative branch to control the executive branch, contrary to the division of powers specifically provided for in article III, section 1.

Throughout its history, the Minnesota Supreme Court has jealously guarded the constitutional division of powers. In State v. Brill, 100 Minn. 499, 502-04, 111 N.W. 639, 640-41 (1907) Justice Elliott described at length the history of the doctrine of the separation of powers with its limitations on the powers of the legislative branch as well as the executive and judicial:

The tendency to sacrifice established principles of constitutional government in order to secure centralized control and high efficiency in administration may easily be carried so far as to endanger the very foundations upon which our system of government rests. That system, devised and elaborated with infinite care and wide knowledge of history and political theory, rests upon certain conceded fundamental principles. The structure which was erected is not simple. It is complex; the parts interrelated and dependent. It was deliberately framed and adopted for the purpose of effecting a change from the system which prevailed on the continent of Europe and to a certain extent in the colonies, and which had earnest and skillful advocates among political writers such as John Milton in England,

Turgot in France, and Franklin in America, who argued for a sovereign legislative body, in which all political power should be vested. But the people were not willing to trust everything to a single person or collection of persons. They had heard that a wise and benevolent despot is the best of all possible rulers, but they had learned that rulers are not always wise and benevolent. A single legislative body, with full control over executive and judicial action, was to their minds as full of possible danger as a single despotic ruler. They were unwilling to trust any man or body of men with the uncontrolled exercise of all the powers of government.

Constitution making began with the states and culminated in the Constitution of the nation. The idea that the powers of the government should be distributed among different bodies of men had taken possession of the minds of the statesmen and people of the formative period. They were familiar with the contrary theory, and with the works of the political writers in which such theories were advocated. But they believed, with Paley, that "the first maxim of a free state is that the law should be made by one set of men and administered by another; in other words, that the legislative and judicial character be kept separate. When these offices were united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from particular motives and directed to private ends. Whilst they are kept separate, general laws are made by one body of men without foreseeing whom they may affect; and, when made, they must be applied by the other, let them affect whom they will." They had read in Montesquieu's Spirit of Laws that "when the legislative powers are united in the same person or in the same body of magistrates there can be no liberty. * * * Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subjects would be exposed to arbitrary control, for the judge would be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything were the same man or body * * * to exercise these powers, that of executing the public resolutions and that of trying the causes of individuals." Their Blackstone taught them that "in this distinct and separate existence of the judicial power in a peculiar body of men, nominated, indeed, by, but not removable at, the pleasure of the crown, consists the one main preservative of public liberty, which cannot long subsist in any state unless the administration of common justice be in some degree separated from the legislative and executive power." Paley's Moral Philosophy, bk. 6, c. 8; Montesquieu, Spirit of Laws, bk. 2, c. 6; Blackstone, Comm. bk. 4, p. 140. In speaking of the old Constitution of Virginia, Jefferson said: "All the powers

of government, legislative, executive, and judicial, result to the legislative body. The concentrating these in the same hands is the precise definition of a despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands and not a single one." Jefferson, Notes on Virginia, p. 195; Story, Const. Law, vol. 1, § 525.

The concerns about potential abuse of governmental power which led to the division of powers among the three co-equal branches of government under our constitution also led to the division of power within the executive department among six elected executive officers, the governor, lieutenant governor, secretary of state, auditor, treasurer and attorney general. The 1973 report of the Minnesota Constitutional Study Commission in its recommendations on the executive branch described the reasons for the division of executive power: "Minnesota's Constitution followed the early American tradition of divided executive authority fostered by colonial hatred of appointed royal governors and fear of their strong, unified powers. As a result, executive power was divided among several persons elected by the people."

3. Constitutional Duties of The State Treasurer

A determination of the constitutional duties of the State Treasurer requires an examination of at least two provisions of the Minnesota Constitution as it existed prior to the adoption on November 5, 1974 of the amendment which reformed the structure, style and form of the constitution. The 1974 amendment was proposed by laws 1974, Chapter 409. Section 2 of Chapter 409 contains a severability clause which provides:

If a change included in the proposed amendment is found to be in violation of the constitution or other than inconsequential by litigation before or after submission of the amendment to the people the change shall be without effect and severed from the other changes. The other changes shall be submitted or remain in effect as though the improper change were not included.

Two changes included in the 1974 amendment bear on the constitutional powers of the State Treasurer. In order to insure that the new language is not interpreted so as to result in an unintended change of meaning, it is necessary to give effect to the former language.

Article V, section 4 now provides in part: "The duties and salaries of the executive officers shall be prescribed by law."

The comparable provision prior to the 1974 amendment was found in Article V, section 5 and provided in part: "The further duties and salaries of the executive officers shall each be prescribed by law." (emphasis added).

In both versions of the constitution, the only reference to the State Treasurer to be found in the provisions preceding the sections in which this language appears is the section which created the office. It is clear that while no specific duties of the State Treasurer had been specified, the drafters of the constitution were aware, when they provided for the "further duties," that the creation of the office itself resulted in constitutional duties to perform the functions ordinarily associated with that title. The term "Treasurer" had a commonly understood meaning when the office was created by the Minnesota Constitution. That commonly understood meaning remains unchanged

today. Blacks Law Dictionary defines "Treasurer" as follows:
 "An officer of a public or private corporation, company or government charged with the receipt, custody, and disbursement of its monies or funds."

In discussing a comparable provision in the Illinois Constitution relating to the constitutional powers of the Secretary of State, the Illinois Supreme Court in a concurring opinion by Mr. Justice Cartwright said:

In like manner the duties of a treasurer to receive and safely keep the public funds are implied from the nature of the office, and the Constitution prohibits paying them out except in pursuance of an appropriation made by law and on the presentation of a warrant issued by the Auditor thereon. No specification in the Constitution of the duties of an Auditor of Public Accounts was required, but they are necessarily implied from the title of the office.

It is a legislative function to provide suitable places and means for the performance of their duties by the officers of the executive department; but it is not within the power of the General Assembly to deprive them of the powers conferred upon them by the Constitution, either in express terms or by implication from the nature and designation of the office. The General Assembly could not provide that the papers and records which, under the Constitution, pertain to the office of the Secretary of State, should be kept or made by some other officer, board or authority; that the moneys of the State should be received, kept or paid out by any other officer than the Treasurer; or that the accounts against the State should be audited except by the Auditor of Public Accounts.

People v. McCullough, 254 Ill. 9, 27-28, 98 N.E. 156, 162 (1912).

The court in that case determined that the Secretary of State must nevertheless comply with the civil service laws in employing ministerial employees because that did not impinge on his implied constitutional duties.

In Thompson v. Legislative Audit Commission, the Supreme Court of New Mexico said:

Although, as stated, the constitution is silent as to the duties of the office (and we would note in passing that there is likewise no specific mention of the duties of the secretary of state, state treasurer, or attorney general), surely it cannot be logically contended that the failure to prescribe specific duties to the office of state auditor meant that the constitution makers felt that, with the passage of time, there might no longer be any need for such office and that the legislature could, by statute, in effect abolish it. It would seem to us that, both historically and fundamentally, the office of state auditor was created and exists for the basic purpose of having a completely independent representative of the people, accountable to no one else, with the power, duty and authority to examine and pass upon the activities of state officers and agencies who, by law, receive and expend public moneys.

Ballentine Law Dictionary, 2d ed., defines "auditor" as follows:

"An officer of the government, whose duty it is to examine the acts of officers who have received and disbursed public moneys by lawful authority."

Such a well-understood meaning is not to be ignored.

Thompson v. Legislative Audit Commission, 79 N.M. 693, 696, 448

P.2d 799, 802 (1968).

The second provision of the pre-1974 constitution which bears on the duties of the state Treasurer is Article IX, section 11 which was deleted from the 1974 restructured constitution.

Section 11 provides:

There shall be published by the treasurer, in at least one newspaper printed at the seat of government, during the first week in January in each year, and in the next volume of the acts of the legislature, detailed statements of all moneys drawn from the treasury during the preceding year, for what purpose and to whom paid, and by what law authorized; and also of all moneys received, and by what authority and from whom.

Regardless of the specific form employed to accomplish the purposes of section 11, it is clear that the State Treasurer has the constitutional duty to receive and disburse state funds, to account for them and report on receipts and expenditures to the

people. Section 11 confirms that the State Treasurer's constitutional duties include all those ordinarily associated with the title "Treasurer."

4. Legislature Cannot Alter Constitutional Office

The Minnesota Constitution contains no provision authorizing the legislature to alter or abolish the office of State Treasurer, and the legislature has no such authority. "A constitutional office may not be abolished without constitutional authorization, and such offices are beyond the power of the legislature to alter or discontinue. The legislature cannot modify or abolish constitutional offices indirectly, such as by taking away the duties and emoluments of the office, thereby in effect abolishing it, or by consolidating the office with another office." 63 Am. Jur. 2d Public Officers and Employees § 32 (1984).

The facts in Thompson v. Legislative Audit Commission, supra, are almost identical to the facts in this case except that it dealt with the position of State Auditor rather than State Treasurer. The court there said:

The 1957 act deprived the auditor of all pre-audit powers and duties, and the 1963 act completely deprived him of all remaining statutory duties devolving upon him as an auditor. Admittedly, the state auditor still has some miscellaneous duties; he is a member of the state board of finance, he is a member of the board of directors of the employees' public retirement association; and, although considerably down the line, he is in the line of gubernatorial succession. However, other than these duties, and perhaps one or two others of little consequence, the office of the state auditor has been left "an empty shell."

We have been cited no case, and we have been able to find none, which sanctions the abolition of a constitutional office in a manner attempted here. To the contrary, there

are several cases almost directly in point which have declared unconstitutional legislation which attempted to abolish a constitutional office by indirection.

79 N.M. at 695, 448 P.2d at 801.

The courts are unanimous in holding that the legislature has no power to directly or indirectly abolish or alter a constitutional office or change the constitutional duties of the office. See Hudson v. Kelly, 76 Ariz. 255, 263 P.2d 362 (1953) (declaring unconstitutional a statute which transferred all the duties of the State Auditor to an appointive official even though it provided for interim duties for the State Auditor until such time as the constitution was amended to abolish the office); Wright v. Callahan, 61 Idaho 167, 99 P.2d 961 (1940) (relating to the powers of the State Auditor); (State ex rel. Brotherton v. Blankenship, 157 W.Va. 100, 207 S.E.2d 421 (1973) (holding unconstitutional the governor's veto of the appropriations, except for the amounts of their salaries, for the constitutional offices of State Treasurer and Secretary of State); 4 A.L.R. 205 at 211; 172 A.L.R. 1366 at 1376; 84 A.L.R.3d 1.

Chapter 13 of the 1985 Extra Session Laws of Minnesota purports to transfer to the Commissioner of Finance every duty of the State Treasurer except a few minor functions specified in the constitution. It purports to reduce his staff to fewer than the number required for that office at the start of this century. It purports to reduce the funds available for the operation of that office to less than one-fifth of the amount available just three years ago. In short, it purports to eliminate the constitutional office of State Treasurer without a vote of the people of the

state. Chapter 13 as it relates to the office of State Treasurer should be declared unconstitutional.

5. Chapter 13 Violates The One-Subject and Expressed-In-Title Requirements

Chapter 13 of the 1985 Minnesota Special Session Laws as it relates to the office of State Treasurer is also unconstitutional because the wholesale changes in the duties of the State Treasurer incorporated in the act are not germane to the subject of the act as expressed in its title. Minnesota Constitution Article IV, section 17 requires that each legislative enactment contain only one subject which shall be expressed in its title. The purpose for this requirement is to permit the members of the legislature to vote on the merits of each individual item of legislation and to avoid "log rolling." The Minnesota legislature has been criticized in recent years for the practice of incorporating in "garbage bills" numerous unrelated items of legislation along with major state appropriations, thus guaranteeing passage of legislation that could not survive if subjected to a separate vote.

Chapter 13 is a classic example of legislation that the expressed-in-title rule was intended to prevent. Nowhere in the title to Chapter 13 is there any reference to the office of State Treasurer. Even assuming the legislature had the power to transfer all of the duties of a constitutional officer to others, such a major change should not be permitted without the assurance of legislative agreement that is afforded by the one subject

requirement and the requirement that that subject be stated in the title of the legislation.

The court should declare Chapter 13 as it relates to the duties of the State Treasurer as unconstitutional on the further ground that it violates Article IV, section 17 of the constitution, and thereby provide guidance to future sessions of the legislature.

October 17, 1985

Respectfully submitted,



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FILED

NOV 7 1985

WAYNE TSCHIMPERLE
CLERK

STATE OF MINNESOTA

IN SUPREME COURT

CX-85-1952

State of Minnesota ex rel. Robert
W. Mattson, Treasurer of the State
of Minnesota,

Petitioner,

vs.

Peter J. Kiedrowski, Commissioner
of Finance of the State of Minnesota,

Respondent.

ORDER

WHEREAS, a petition for a writ of quo warranto has been filed by Robert W. Mattson, Treasurer of the State of Minnesota;

IT IS HEREBY ORDERED that all proceedings now pending in this court are stayed and jurisdiction to decide the ultimate question is retained but the matter is remanded to the Ramsey County District Court for proceedings:

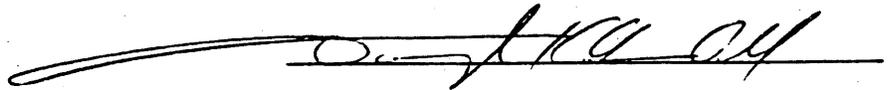
- (1) to determine whether factual questions, if any, are presented in connection with the petition;
- (2) to determine whether, if a factual dispute exists, findings of fact are relevant to the ultimate issue presented; and
- (3) to make the requisite findings of fact, if necessary.

IT IS FURTHER ORDERED that the respondent Peter J. Kiedrowski, Commissioner of Finance of the State of Minnesota shall serve and file an answer to the

petition within 15 days of the date of this order and that, thereafter, an expedited hearing on the limited remand shall be conducted in the district court. Upon the issuance of its preliminary determinations and findings of fact, if any, the petitioner shall formally inform this court and request an expedited briefing schedule.

Dated: Nov 2, 1985

BY THE COURT:

A handwritten signature in black ink, appearing to read "D. J. [unclear]", is written over a horizontal line.

Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT
CX-85-1952

State of Minnesota ex rel.
Robert W. Mattson, Treasurer
of the State of Minnesota,

Petitioner,

vs.

Peter J. Kiedrowski, Commissioner
of Finance of the State of
Minnesota,

Respondent.

ANSWER TO PETITION
FOR WRIT OF
QUO WARRANTO

Respondent, Peter J. Kiedrowski, Commissioner of Finance of the State of Minnesota, for his Answer to the Petition for Writ of Quo Warranto, admits, denies and alleges as follows:

1. Denies that he has usurped the fundamental care and custody of the state treasury or has otherwise taken the fundamental constitutional powers and duties of petitioner, Treasurer of the State of Minnesota. See Petition for Writ of Quo Warranto at 1.

2. Denies that, even if the allegations of the Petition are arguendo true, petitioner is entitled to a transfer from respondent's budget in an amount of \$422,000.
Id.

3. Denies that the Minnesota Constitution provides that the Treasurer's powers and duties fundamentally include

the fiscal year ending June 30, 1987, compared to \$612,400 and \$584,600 respectively for the preceding two fiscal years. Id.

9. Admits the allegation that section 95 of the challenged legislation empowers the respondent Commissioner of Finance to "receive and record all money paid into the state treasury and safely keep it until lawfully paid." Id.

10. Alleges that sections 103, 107, 300 and 366 of the challenged legislation transfer some of the powers to receive and keep state funds. Id.

11. Admits that section 376 of the challenged legislation repeals those statutory sections identified in the first paragraph on page 4 of petitioner's petition, but affirmatively alleges that these are purely statutory functions which are not part of the Treasurer's fundamental constitutional powers and duties. Id. at 4.

12. Alleges that respondent Commissioner of Finance has assumed responsibility for those statutory duties entrusted to him by the challenged legislation and also alleges that respondent has already taken actions to accomplish the purposes identified in section 13 of Chapter 13 of the challenged legislation and has also attempted to work with petitioner to ensure that their respective responsibilities are performed in a manner that will best serve the public interest. Id.

13. Finally, respondent denies that any of the statutory changes mandated by the challenged legislation

deprive petitioner of any constitutional duties or powers or in any other way deprive petitioner of any legal rights.

In that petitioner's Petition for Writ of Quo Warranto is substantially a legal argument, it is not susceptible to a traditional "answer." In short, respondent asserts that the legal arguments advanced in the petition are either unfounded or inapplicable to the instant proceeding and offers to submit responsive legal arguments once the factual issues are more clearly identified.

WHEREFORE, respondent respectfully requests that petitioner's Petition be denied in its entirety and the Court issue an order sustaining the validity of the challenged legislation in its entirety,

Dated: November 19, 1985.

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ATTORNEYS FOR PETITIONER

APP-25
STATE OF MINNESOTA
IN SUPREME COURT

Supreme Court File
Number: CX-85-1952

District Court File
Number: 475308

State of Minnesota ex rel. Robert
W. Mattson, Treasurer of the State
of Minnesota,

Petitioner,

vs.

ORDER

Peter J. Kiedrowski, Commissioner
of Finance of the State of Minnesota,

Respondent.

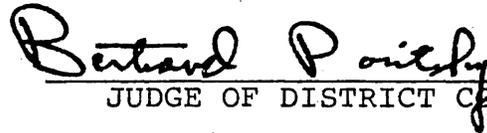
The above-entitled matter came duly on before the undersigned Judge of Ramsey County District Court on the 13th day of December, 1985, pursuant to Order of the Minnesota Supreme Court dated November 7, 1985. Wayne H. Olson, Esq., 315 Peavey Building, 730 Second Avenue South, Minneapolis, appeared for Petitioner; and Kent G. Harbison, Chief Deputy Attorney General, 102 Capitol Building, St. Paul, appeared for Respondent.

The first issue presented by the above Order of the Supreme Court is "to determine whether factual questions, if any, are presented in connection with the petition." The question raises the issue of which facts are relevant. The parties have agreed to submit briefs on that issue. After the Court makes a determination on the issue of which facts are relevant, the issue of whether relevant facts are in dispute will be addressed.

The parties agreed to the following briefing schedule on the issue of which facts are relevant:

1. Respondent will submit a letter brief on or before December 20, 1985.
2. Petitioner will submit a letter brief on or before January 3, 1986.
3. The parties and the Court have each reserved the right to ask for oral argument, once the briefs are submitted.

Dated at St. Paul, Minnesota
this 13th day of December, 1985.


JUDGE OF DISTRICT COURT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

File No. 475308

State of Minnesota ex rel. Robert
W. Mattson, Treasurer of the State
of Minnesota,

Petitioner,

vs.

ORDER FOR HEARING

Peter J. Kiedrowski, Commissioner
of Finance of the State of Minnesota,

Respondent.

The above-entitled matter came duly on before the undersigned Judge of District Court pursuant to Order of the Minnesota Supreme Court, dated November 7, 1985. Wayne H. Olson, Esq., 315 Peavey Building, 730 Second Avenue South, Minneapolis, appeared for Relator Robert W. Mattson, Treasurer of the State of Minnesota; Kent G. Harbison, Chief Deputy Attorney General, 102 State Capitol, St. Paul, appeared for Respondent Peter J. Kiedrowski, Commissioner of Finance of the State of Minnesota. Both parties have submitted briefs on the issues addressed in the Supreme Court's Order.

This Court determines that factual issues are presented by the Petition and Response. Accordingly, IT IS ORDERED that an expedited factual hearing be held in the above-entitled matter before the undersigned.

The attached Memorandum is made part of this Order.

Dated at St. Paul, Minnesota

this 4th day of February, 1986.


 JUDGE OF DISTRICT COURT

M E M O R A N D U M

This matter is before the District Court upon an Order of the Minnesota Supreme Court, dated November 7, 1985. The Order requires this court:

- (1) to determine whether factual questions, if any, are presented in connection with the petition;
- (2) to determine whether, if a factual dispute exists, findings of fact are relevant to the ultimate issue presented; and
- (3) to make the requisite findings of fact, if necessary.

The Relator, Robert W. Mattson, Treasurer of the State of Minnesota ("The Treasurer") takes the position that there are no factual issues presented in connection with the Petition, and that the matter should be referred to the Supreme Court for determination of the legal issues involved. The Respondent, Peter J. Kiedrowski, Commissioner of Finance of the State of Minnesota ("The Commissioner") takes the position that a factual record is necessary to a proper determination of this action by

the Supreme Court.

In his Petition, the Treasurer sets out the following grounds in support of his position:

- (1) The legislature does not have the power to eliminate the constitutional office of Treasurer, transfer the Treasurer's fundamental constitutional powers and duties to others and to prevent the Treasurer from carrying out his fundamental constitutional powers and duties,
- (2) The provisions, which virtually eliminate the constitutional office of Treasurer, are one subject among multiple subjects embraced within Chapter 13 in violation of Article IV, section 17 of the Minnesota Constitution which provides: "No law shall embrace more than one subject which shall be expressed in its title," and
- (3) The title of Chapter 13 does not express that Chapter 13 contains provisions to virtually eliminate the office of Treasurer and transfer the Treasurer's fundamental constitutional duties to the Commissioner of Finance. (Petition, pp. 4,5.)

In my opinion, the resolution of the first issue requires a factual hearing, while the resolution of the second and third does not.

I.

The first ground urged by the Treasurer for the issuance of the writ is that, essentially, L. Spec. Sess. 1985, Ch. 13, Section 13, eliminates the office of the Treasurer, in violation of Article V, Sec. 1, of the Minnesota Constitution. As to whether this issue requires a factual hearing, the

Treasurer takes the position that the matter is to be resolved by an examination of the Constitution and the appropriate legislative enactments. The Commissioner's response is that an examination of the Constitution and statutes is insufficient.

In my view, the Commissioner's position is well taken on this issue. Both parties agree that a reading of the Constitution is insufficient and that one must go beyond that document to resolve the issue; they differ only on how far one must go. If an examination of the statutes does not give a full and accurate picture of the duties performed by the Treasurer's office prior to the enactment of Chapter 13, and related duties performed at that time by other State agencies, then it would be impossible to assess with precision the impact of Chapter 13 on the Treasurer. As an example, the Commissioner argues that certain duties which were given to the Treasurer's office by statute had not in fact been performed by that office for a number of years. (Commissioner's letter brief, December 19, 1985, pp. 5 & 6.) In such a situation, a statute transferring one of those duties away from the Treasurer's office would be of a different order from an identical statute in a situation in which the duty had in fact been performed by the Treasurer.

State ex rel. Gardner v. Holm, 241 Minn 125, 62 N.W. 2d 52 (1954) does not militate against this position. The language in that case referred to by the parties concerns powers which the Constitution expressly grants to a constitutional officer:

No unchallenged exercise of a power not granted to a branch of our government can serve to confer upon it such power when the clear language of the constitution either denies to it such power or confers such power upon another branch of government. Id. at 137, 62 N.W. 2d 60 (Emphasis supplied).

In the instant case, the parties are not litigating powers which were conferred or denied by "the clear language of the Constitution . . ." but powers which were, at best, conferred by statute.

In short, I conclude that a factual record is essential to a determination of the first ground set out in the Petition. The central issue concerns which state offices and agencies performed the duties with respect to "the receipt, custody, and disbursement of [the State's] monies or funds." Black's Law Dictionary, quoted at p.13 of the Treasurer's Petition. The record should include - but not necessarily be limited to - the following issues:

1. What duties did the Treasurer's office perform prior to the enactment of Chapter 13? This issue may include a review of the statutes which assigned duties to the office, evidence concerning the question of whether the duties were actually performed by that office, and evidence concerning any duties which were in the Treasurer's office by custom and usage, although not assigned by law.

2. What related duties have been performed by other agencies of the State government? This issue may include

similar matters to those set out in Paragraph 1, supra.

3. What is the actual impact of Chapter 13 on the performance of these duties? This issue may include the matter of appropriations and staff.

II.

The second ground asserted by the Treasurer is that Chapter 13 violates Art. IV, Sec. 17 of the Constitution in that Chapter 13 contains more than one subject. The third ground asserted by the Treasurer is that Chapter 13 violates the same section of the Constitution in that the title to the legislation does not express the effect of it, which is that it virtually eliminates the office of Treasurer and transfers the functions of that office to the Commissioner of Finance. The Commissioner argues that it is relevant in deciding this issue whether various interested parties, including legislators, had knowledge of the effect of the legislation. The Treasurer argues that a factual record is not necessary. I have examined recent cases in which the Supreme Court has ruled on challenges to legislation, based on Art. IV, Sec. 17, and it is my conclusion that a factual record is inappropriate.

In Thomas v. Housing & Redevelopment Authority of Duluth, 234 Minn. 221, 48 N.W. 2d 175 (1951), cited by the Commissioner, the Supreme Court indicated how it resolved an attack on legislation based on the predecessor to Art. IV, Sec. 17:

We have carefully examined the title in its entirety in connection with the subject matter of the act and in connection with plaintiffs' objections. It is our opinion that the title does not offend Minn. Const. art. 4 [Sec.] 27. Id. at 245, 48 N.W. 2d 190.

In Wass v. Anderson, 252 N.W. 2d 131 (Minn. 1977), also cited by the Commissioner, the case was decided in the trial court on a motion for summary judgment. On appeal, the Supreme Court examined the title of the challenged legislation and summarized the various sections of it. Although one of the parties asked the court to take judicial notice of certain matters, the Court did not expressly take such notice. It appears that the decision in Wass rests solely on an analysis of the title and contents of the challenged legislation, viewed against a background of precedential Supreme Court cases.

In the recent case of Lifteau v. Metropolitan Sports Fac. Com'n, 270 N.W. 2d 749 (Minn. 1978), the Plaintiff attacked the constitutionality of the Metropolitan Sports Facilities Act, on the ground, inter alia, that it violated Art. IV, Sec. 17. In sustaining the act, the Supreme Court examined the title and the body of the act, and took judicial notice of certain facts surrounding its passage.

In Visina v. Freeman, 252 Minn. 177, 89 N.W. 2d 635 (1958), the plaintiff attacked legislation involving the Port Authority of Duluth on the ground, inter alia, that it violated Art. IV, Sec. 17. The case was submitted to the trial court on

stipulated facts. When the matter came before the Supreme Court, that court examined the title and body of the act, and may have judicially noticed that the three enactments which were challenged were enacted more or less as a single package. The Court reviewed the precedents and sustained the legislation.

Based on the cases above cited, I conclude that the proper procedure for resolving the second and third grounds raised by the Treasurer is for the Court deciding the legal issues - in this case, the Supreme Court - to examine both the title and body of the legislation in light of the precedential cases. The parties may request the Court to take judicial notice of certain facts, and there is precedent for the Court to take such notice. In any case, it is my view that the proper procedure for resolving a challenge to legislation on the ground that it violates Art. IV, Sec. 17, does not encompass making a factual record.

B. P.

BP/dl

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

File No. 475308

State of Minnesota ex rel. Robert
W. Mattson, Treasurer of the State
of Minnesota,

Petitioner,

vs.

FINDINGS OF FACT

Peter J. Kiedrowski, Commissioner
of Finance of the State of
Minnesota,

Respondent.

The above-entitled matter came duly on before the undersigned Judge of District Court for hearing on the 17th day of March, 1986, pursuant to the Order of the undersigned dated February 4, 1986. Wayne H. Olson, Esq., 315 Peavey Building, 730 Second Avenue South, Minneapolis, appeared for Relator Robert W. Mattson, Treasurer of the State of Minnesota; Kent G. Harbison, Chief Deputy Attorney General, and Peggy Bunch, Special Assistant Attorney General, 102 State Capitol, St. Paul, appeared for Respondent Peter J. Kiedrowski, Commissioner of Finance of the State of Minnesota.

In the Order and Memorandum herein dated February 4, 1986, the Court ruled that the first ground raised by Relator in his petition required a factual record, while the second and third grounds raised by Relator did not. Upon entry of the said ruling, the parties entered into a Stipulation of facts with respect to the first ground, which Stipulation is attached hereto.

Accordingly, the Court makes FINDINGS OF FACT as set out in the attached Stipulation of the parties.

Dated at St. Paul, Minnesota
this 18th day of March, 1986.

Bernard Pinsky
JUDGE OF DISTRICT COURT

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota ex rel.
Robert W. Mattson, Treasurer
of the State of Minnesota,

No. 475308

Petitioner,

STIPULATION OF FACTS

vs.

Peter J. Kiedrowski, Commissioner
of Finance of the State of
Minnesota,

Respondent.

The parties herein, by and through their respective undersigned counsel, hereby stipulate and agree as follows:

1. This stipulation of facts is agreed to solely for the purposes of the instant litigation. It is not intended as a stipulation as to the relevance of the facts stipulated or as to any legal questions and is not intended for use in any other proceeding.

2. Prior to July 1, 1985, the Treasurer employed seventeen people as follows:

1. State Treasurer
2. Deputy State Treasurer
3. Fiscal Activities Officer
4. Executive Secretary
5. Executive I
6. Accounting Officer Senior
7. Clerk Typist
8. Account Clerk Senior

9. Account Clerk Senior
10. EDP Operations Technician 2
11. Data Entry Operator
12. Cashier
13. Cashier
14. EDP Operations Supervisor 2
15. Accounting Technician Senior
16. Account Clerk Senior
17. Office Services Supervisor 2

The Treasurer's approved complement of employees for the immediately preceding biennium included three additional positions which were vacant on July 1, 1985.

3. Since July 1, 1985, the Treasurer has employed four people as follows:

1. State Treasurer
2. Executive Assistant Principal
3. Fiscal Activities Officer
4. Executive Secretary (Half-time)

Nine of the employees in the Treasurer's office were transferred to the Department of Finance on July 1, 1985, as a result of the enactment of 1985 Minn. Laws (Spec. Sess.) ch. 13, §§ 13 et seq. (hereinafter "Chapter 13"). Those nine employees now perform duties in the Department of Finance which include, among a few other duties, functions similar to those they performed while employed in the Treasurer's office. In addition, they are now

working in the same physical office location as they occupied while in the Treasurer's office and use equipment that includes, among additional facilities, the same equipment they used in the Treasurer's office.

4. Following the enactment of Chapter 13, the Treasurer of the State of Minnesota:

a. Is a member of the Minnesota State Board of Investment, as provided by Minn. Const. art. XI, § 8, and Minn. Stat. § 11A.03;

b. Is a member of the Minnesota State Executive Council, as provided by Minn. Stat. § 9.011;

c. Is required to maintain a separate record of the Minnesota State Bond Fund, pursuant to Minn. Const. art. XI, § 7;

d. Is provided the daily cash reconciliation reports from the Commissioner of Finance pursuant to Chapter 13.

5. The attached Exhibits A, B, C and D are respectively accurate copies of the "Report of the Constitutional Commission of Minnesota" (October 1, 1948); Governor's Loaned Executive Action Program Final Report, Dec. 23, 1972; Report of the 1972 Minnesota Constitutional Study Commission; and "Report of the Governor's Task Force on Constitutional Officers" (Executive Branch Policy Development Program 1984-1985).

6. Prior to July 1, 1985, the Treasurer carried out his responsibility for receiving and keeping state moneys, which include items such as tax revenues, license plate fees, sales of services, federal aids and state debt instrument sale proceeds, as follows:

As measured by the number of separate payment transactions, most individual payments of money initially received by state agencies were taken by the individual agencies directly to designated private banking institutions for deposit. All deposit slips, along with the agencies' written reports on Department of Finance Form 8 (known as "FIN 8 reports"), were sent to the Treasurer. An example of a FIN 8 report is attached as Exhibit E. The Treasurer's staff then verified the total amounts of the deposits reported by the agencies against the bank deposit slips. Examples of state deposits handled in this manner include funds deposited in local banking institutions by Minnesota state hospitals, state community colleges, deputy registrars and state parks located in out-lying areas throughout the state.

As measured by the total amount of money received, most funds received by state agencies would be batched and banded together by the respective agency employees with an adding machine tape cumulation of the amount of the items in each batch. The batches of those funds (including both checks and cash) would be placed in a wire basket or occasionally a money bag with an adding machine tape cumulation of the total batches in each basket or bag and taken to the Treasurer's office together with the FIN 8 report prepared by the agency covering those agency receipts.

The Treasurer's staff then issued a receipt to each agency when it delivered the baskets or money bags and verified each basket total by re-adding the individual batch totals. With respect to the batches of cash delivered to the Treasurer's office, the Treasurer's staff would recount the cash to verify the adding machine tape cumulation, place that cash in the Treasurer's statutory revolving fund, and issue a check against the revolving fund account in an equivalent amount as a substitution for the cash. The Treasurer's office did not separately count each check to verify the accuracy of the adding machine tape total for each batch. Approximately four or five times a week the Treasurer's staff found in the batches checks in the amount of \$500,000 or more which were drawn on Twin Cities' depository banks. They were separated and special deposit slips were prepared for them and other checks drawn on the same bank, and were deposited in the bank on which drawn to make that money immediately available for investments. Deposit slips were prepared for the remainder, and deposits were made three times daily.

Each day the bank deposit slips were fed into the Treasurer's computer. The computer then printed out a trial balance report with a posting to the individual agency bank accounts and a grand total of the deposits entered. The FIN 8 reports (but not the bank deposit information) were forwarded to the Department of Finance. For budget administration and accounting purposes, the Finance Department then entered, according to source, appropriation account, and fund, the information from the FIN 8 reports into the

State-Wide Accounting System (SWAS), which is the central automated accounting system operated by the Department of Finance for state budget and accounting administration. The SWAS provides expenditure controls and produces daily trial balances for all state agency appropriations. The SWAS printout reports were balanced against the Treasurer's report of total bank deposits.

The Treasurer received monthly bank statements for each bank account and reconciled them against his records.

7. Since July 1, 1985, the Treasurer performs none of the duties described in the preceding paragraph. Those duties (with changes in detail, such as more deposits being delivered to banks by state agencies) are performed by the Finance Department employees, including the nine who were transferred from the Treasurer's office.

8. Since 1873 all money paid to the State of Minnesota has been deposited in private banking institutions. The Executive Council designates the particular banking institutions based upon, since 1973, the reports of the Commissioner of Finance, following a public bidding process administered by the Commissioner of Finance. Prior to July 1, 1985, the Treasurer opened the bank accounts in the designated depositories and received assistance from the Finance Department employees as needed. For example, the Department of Finance would provide the Treasurer the names and addresses of the banks selected, and would assist the Treasurer's staff in obtaining deposit slips and signature cards and by contacting representatives of banks concerning delays or similar problems in opening the

accounts. The Treasurer arranged for a custodian bank for the collateral and approved the collateral pledged by the depository banks. He monitored the collateral to verify its sufficiency. Deposits were made in those accounts as described in paragraph 6 above. Disbursements from those accounts were made only on order of the Treasurer.

Since July 1, 1985, the Department of Finance has performed all the Treasurer's functions described in this paragraph.

At the present time there are 305 different bank accounts throughout Minnesota where state funds are kept. Of those accounts, 165 are for deposits of funds received by the Department of Public Safety deputy registrars.

9. The process of initiating payments of state funds to private vendors for goods and services was not changed by Chapter 13. Generally, state government agencies to which funds had been appropriated initiated the payment process by verifying that particular claims should be paid and notifying the Department of Finance thereof. At that point the Department of Finance, using the SWAS which it manages, determined whether there were available funds appropriated to cover the payments. If such funds were deemed available, the Department of Finance ordered state warrants payable to the vendors. Those warrants were printed by the Department of Administration and returned to the Department of Finance where facsimile signatures of the Commissioner of Finance and the State Treasurer were affixed. They were then sent to the Department of

Administration for mailing to the respective claimants/vendors. Until approximately five years ago, representatives of the Commissioner of Finance and the Treasurer were always physically present to monitor the signature/stamping process in the Department of Finance. During the past five years the Treasurer had not required the presence of his representative and the Department of Finance was authorized to affix his signature without someone from his office being present.

10. State employee payroll warrants, legislative per diem and expense warrants, and all others not for private vendors were issued in the same manner as warrants to private vendors, as described above, and were batched by agency and delivered to the Treasurer for delivery to the respective state agencies. A representative of each state agency would go to the Treasurer's office to pick up the payroll warrants and return to deliver them to the respective agency employees.

11. A computer tape of all warrants issued by the Department of Finance was then sent to the Treasurer.

12. Warrants are negotiated in the same manner as checks, except that the actual transfer of funds from the state bank accounts occurs only after the warrant is finally presented to the state for payment.

13. Prior to July 1, 1985, the eight metropolitan clearing banks, which had made payment on state warrants, presented the warrants to the Treasurer for payment. When the warrants were received from the individual banks, the Treasurer verified them by

computer against his data on warrants issued, received earlier from the Department of Finance. The computer totals for warrants presented for payment were then compared to the totals received from the banks. Any warrants not consistent with the computer data on issued warrants were deleted (e.g., stop payments or alterations). After corrections and adjustments, the Treasurer directed payment to the banks for the valid state warrants presented. After the warrants had been balanced and the banks paid, the warrants were put into boxes with a complete listing and were sent to the Department of Finance. The total amount of warrants redeemed was reported to the Department of Finance, which recorded this amount to adjust the amount of outstanding warrants in SWAS.

14. Since July 1, 1985, the tasks of the Treasurer in paying warrants described above have been performed by Finance Department employees, including the nine transferred from the Treasurer, using the Treasurer's former computer. The Treasurer now receives after July 1, 1985, the daily cash reconciliation reports from the Department of Finance.

15. Prior to July 1, 1985, the Department of Finance was responsible for reviewing supporting documentation for all warrants to determine the proper documents for payment of the claims and for determining whether there were sufficient state funds to support payment of the warrants.

16. During the past 14 years drafts of the Commissioner of Finance were used only to collect payments from counties for a variety of University of Minnesota Hospital services. As a result of a 1984 statutory change, drafts were totally eliminated.

17. The amount of the \$400,000 bond under Minn. Stat. § 7.01 (prior to its repeal in 1985) had not been increased since 1874.

18. The aeronautics bonds under Minn. Stat. §§ 360.302 and 360.306 were most recently sold in 1963. The last of those bonds were retired in 1983.

19. Each day the State Board of Investment invests all available state funds. Prior to July 1, 1985, the Treasurer determined the amount available for investment using his computer information on deposits and payments made, information from the Department of Finance regarding the warrants it had issued, and telephone information on the large deposits by state agencies. Two or three times each day the Treasurer notified the Board of Investment's staff of the amount of funds available and the Board's staff decided how to invest the funds. The Treasurer then disbursed the state's money for investments in accordance with the Board's decisions. Since July 1, 1985, the Department of Finance has taken over the responsibility for determining the amount of funds available for investment and the disbursements of the state funds therefor.

20. Prior to July 1, 1985, the practice of the Treasurer's office was to have all state agencies in the Capitol complex area bring their checks to the Treasurer's office. These checks would then be taken three times a day as described above in paragraph 6, to the state's bank depositories. Since July 1, 1985, the Department of Finance has adopted a policy whereby those Capitol

complex area agencies with large amounts of funds or a significant number of checks take those funds directly to the depository institutions and report those deposits to the Department of Finance each day.

21. Prior to July 1, 1985, the Treasurer supervised and managed the debt service function on all state bond issues, now totalling about \$1.2 billion outstanding. The Treasurer determined the amounts of principal and interest payments and their due dates and directed payment. Since July 1, 1985, by agreement of the Treasurer, the Department of Finance has administered the debt service payments. Exhibit F is a copy of correspondence from the Commissioner of Finance to the Treasurer reflecting their understanding regarding this function. Since July 1, 1985, the Treasurer's fiscal activities officer has usually signed the debt service documents before the Department of Finance makes the actual payments. Sometimes, however, that officer has not signed the documents, and a representative of the Commissioner of Finance has performed that function. When the latter action has been taken, an employee of the Department of Finance would make arrangements in advance with the Treasurer's fiscal activities officer.

22. Prior to July 1, 1985, under Minn. Stat. § 268.05 the Treasurer was the ex officio custodian of the state unemployment compensation fund. For several years those funds were not kept in the general state treasury and were not accounted for as part of the SWAS. They were managed by the Department of Economic Security (now Department of Jobs and Training), and the actual record-keeping for

those funds had been provided by the Department of Economic Security. The Treasurer monitored the bank accounts in which those funds were held and directed deposit and transfer of such funds.

23. Under Chapter 13 the Commissioner of Finance is the ex officio custodian of the fund but does not now exercise direct control over the bank accounts.

24. Since July 1, 1985, the Commissioner of Finance provides the following reports (Exhibits G-J) to the Treasurer:

1. Daily bank balance (Trial balance report)
2. Daily cash account statement
3. Daily State of Minnesota cash position
4. Daily Invested Treasurer's Cash Fund position

In addition, the Department of Finance has offered a monthly report on warrants issued and redeemed, but the Treasurer's fiscal activities officer has asked that such reports be provided only when he requests them. The Department of Finance also provides to the Treasurer data showing the per diem and other expenses incurred by legislators.

25. Petitioner has publicly stated prior to the enactment of Chapter 13 that the Constitution should be amended to combine into one elective office the functions of State Treasurer, State Auditor and Secretary of State.

26. As a result of Chapter 13, nine personnel positions within the Treasurer's office were transferred to the Department of

Finance to perform comparable services and seven personnel positions within the Treasurer's office were abolished. Of the seven positions abolished, three were vacant when Chapter 13 was passed and the Treasurer did not have any immediate intention to fill any one of them.

Prior to the enactment of Chapter 13, the Treasurer requested in writing that the Legislature appropriate for his office budget \$713,200 for FY '86 and \$701,200 for FY '87. Instead, the Legislature appropriated under Chapter 13 to the Treasurer \$162,600 for FY '86 and \$163,700 for FY '87. With respect to the functions and positions transferred to the Department of Finance by Chapter 13, the Legislature appropriated \$375,900 for FY '86 and \$373,300 for FY '87. (In addition, the Legislature added \$4,500 to the Treasurer's budget as a 1986 salary supplement, and \$10,200 as a salary supplement for the Department of Finance for 1986).

Dated: March 18, 1986.

Dated: March 18, 1986.

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

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