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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

By   f   Deputy

SECOND JUDICIAL DISTRICT

Court File No. 62-cv-11-5203

Judge: Kathleen Gearin

In Re: Temporary Funding of Core  
Functions of the Executive Branch  
of the State of Minnesota

**MOTION OF MINNESOTA  
ZOOLOGICAL GARDEN TO  
INTERVENE OR FILE AMICUS BRIEF**

Pursuant to Rule 24 of the Minnesota Rules of Civil Procedure, the Minnesota Zoological Garden petitions the Court to accept this amicus curiae submission and further requests the Court that the Minnesota Zoological Garden have leave to intervene in this action.

**FACTS**

The Minnesota Zoological Garden (hereinafter "Zoo") opened on May 22, 1978. The Zoo was conceived as an innovative concept offering unique visitor experience. Instead of steel bars separating the viewer from a caged animal, the Zoo has open exhibits, naturalistic settings, and glass partitions or other natural security barriers protecting the animal collection.

Since the beginning, conservation has been a core value of the Minnesota Zoo. The focus of the Zoo has been on animals that are considered threatened or endangered. A part of the mission of the Zoo is to educate, maintain, and provide information and research on rare species to visitors and to other zoos and related scientific organizations. To that end, the Zoo manages and breeds animals that may face extinction in the wild.

The Minnesota Zoo is a leader in recovery and reintroduction projects, such as the Trumpeter Swan Restoration in the Midwest, the Asian Wild Horse Recovery in Mongolia, Blue Bird recovery in Minnesota, and Mexican Gray Wolf Recovery and Reintroduction in the

Southwest United States. The Zoo operates in partnership with two internationally known conservation programs: 1.) the International Species Information System, a program that provides animal record keeping software and data based services to zoos around the world, and 2.) the Conservation Breeding Specialists Group, a branch of the International Union for the Conservation of Nature.

Since 1978, more than 30 million people have walked through the gates of the Minnesota Zoo. The Zoo is also the host of the School for Environmental Studies (SES), a high school operated with Independent School District #196 that allows students to focus on science related curriculum.

Only 29 per cent of the Zoo's entire budget is appropriated from the general treasury of the state. The Zoo substantially relies upon receipts from parking, admission, concessions, membership and donations. The month of July offers one of the greatest returns in revenue for the Zoo. It is expected that earned revenue for July, 2011 will exceed \$1,500,000.00, and that the expenses will be approximately \$762,000.00. Similarly, for the month of August, the earned revenues are expected to exceed \$1,600,000.00.

At present the Zoo has a balance of \$1,300,000.00 in its current fiscal year. By using the carry forward funds in its current budget and by utilizing its earned income, the Zoo is able, with a court order that recognizes the current statutory authorization, to manage its operations through September of 2011.

Under Minnesota Statute §85A.04, all receipts from parking, admissions, concessions, membership and donations are deposited in a Special Revenue Account and are appropriated to the Zoo Board for operations and maintenance. This statutory appropriation allows the Zoo to

receive and expand earned revenue, even if a general appropriation has not been made by the legislature.

If the Zoo is closed, the Zoo will not be able to achieve a balanced budget and will be forced to make massive budget cuts for the remainder of the fiscal year. These reductions will force the closure of many exhibits and other Zoo facilities, likely cascading into diminished attendance requiring even further closures and cuts.

For instance, the Zoo will be forced to cancel numerous existing contractual obligations, such as agreements with the Food Service Retail Concessionaires, membership purchases, Zoo Event Rentals, contracted concerts and other third-party events. **Concert Fees.** During the summer the Zoo receives substantial income from the rental of space for concerts and shows. The prepayments for these shows have been received by the Zoo, and the Zoo is exposed to claims for substantial penalties if it should cancel these contracts. The contract cancellations could also result in substantial liability for the Zoo for consequential damages if the sponsors are unable to secure suitable alternative sites on such late notice. **Zoo Camps.** In addition, the Zoo operates children's camps, which are currently operating, and for which it has received registration fees. The Zoo will be obligated to refund these fees, even though it has expended the resources necessary to host these camps. **Zoo School.** The Zoo is obligated to Independent School District #196 to make available space for its high school. If closure of the Zoo should impair this access, the Zoo is open to a claim for breach of contract. **Food Service Concessionaire Leases.** The concessionaires have made substantial investments in the operation of their restaurants, food stands, and stores, and will be substantially damaged if a closure takes place. The Zoo will be liable to food concessionaires for breach of contract if the Zoo closes its facilities. **Memberships.** The Zoo does not operate a reserve fund with regard to membership

fees. The fees are booked as they are received. If the Zoo is not open to members, the Zoo could be liable to members for a proportion of the annual membership fee relative to the days that the Zoo is closed.

In addition to the above direct damage, a closure of the Zoo will result in permanent damage. This is because the Zoo is in the midst of a series of major capital improvement projects, suspension of which due to a shut-down would result in significant additional costs.

The loss of the above deposits, prepayments, license fees, franchise fees, lease rentals, memberships and philanthropic gifts will be devastating to the operation of the Zoo. More important, a closure of the Zoo could result in horrific liabilities under the above contracts. In the end, the Zoo loss of income combined with the liability for damages could cause a “death spiral” for the Zoo in which some Zoo activities will be indefinitely suspended or permanently closed.

It should be noted that, in addition to the above income and expenses of the Zoo, the Zoo has an economic impact exceeding \$114,000,000.00 per year. This economic activity involves the gamut from veterinary care and supplies to food services to major construction activities.

It should also be noted that the Zoo is also a State service which fulfills the requirements of substantial environmental education, as well as the support of conservation efforts.

## **LAW AND ARGUMENT**

The Court has the authority to order that the Minnesota Zoo may expend funds that it currently holds and collects as fees.

This is because these funds are not subject to the appropriation language (the so-called “Treasury Expenditure Clause”) of Article XI, Section 1 of the Minnesota Constitution. See *Nelson v. Iverson*, 125 Minn. 67, 145 N.W. 607 (1914). The Treasury Expenditure Clause of the

Minnesota Constitution has several corollaries. The Clause provides that a state agency ordinarily may only spend money that the legislature appropriates to it. In other words, money collected for the State must ordinarily go to the State without deduction. Thus, if Zoo officials collect fees that are destined for the state treasury, they must normally remit all those fees to the state. *State ex rel. Spannaus v. Schneider*, 297 Minn. 520, 211 N.W.2d. 516 (1973). There is an exception to this requirement, however, if a state agency, such as the Zoo, is authorized to count certain of its fees it collects as part of the appropriation for the Zoo's operating expenses. (Attorney General Opinion, #589, p.858 (1934)). In addition, a state agency may expend funds where the legislature has enacted "open and standing" appropriations. For instance, a statutory appropriation for construction and maintenance of trunk highways may be used to pay for attorney's fees in litigation relating to the construction of highways. *Regan v. Babcock*, 196 Minn 243, 264 N.W. 803 (1936). Other ongoing obligations include general education aid for schools districts (Minn. Stat. §126C.20 (2006)); debt service on general obligation bond issues (Minn. Stat. §16A.641, subd. 10 (2006)); debt service on trunk highway bonds (Minn. Stat. §167.50; and local government aid (Minn. Stat. §477A.03, subd. 2).

A legislative history regarding the administration and appropriation of zoo receipts underscores that the Zoo may use its fees for purposes of its operation. Originally, the Zoo was given a standing appropriation. (Minn. Stat. §85A.04). *U.S. Fire v. Minnesota State Zoological Bd*, 307 N.W.2d. 490 (1981). In 1977, funding for the Zoo was changed to require biennial appropriations. *Laws 1977, c. 455, §79*. In 1980, in response to a default involving the Zoo monorail system, the legislature enacted language that unequivocally stated that state government was not responsible for financing of the Zoo monorail system:

"All receipts from the operation of the zoo ride shall be deposited in a special account in the state treasury. All receipts from the zoo ride are appropriated

to the board for the purpose of the zoo ride. These receipts are the only money appropriated for zoo ride operating expenses or debt service.”

Laws 1980, Ch. 614, S. 14 . The Supreme Court, applying this language, held that the state was not liable for installment payments on the Zoo ride absent a legislative appropriation.

In 1989, after the monorail bond issue was resolved, the legislature once again modified the administration of receipts from the zoo. It enacted the following language as part of Minn. Stat. §85A.04:

**“Subdivision 4. Zoo concession and revenue account.** All receipts and interest from the operation of zoo concessions, memberships, and donations must be deposited in a special account in the special revenue fund **and are appropriated to the Board.**”

This statutory provision is a statutory authorization that the Zoo is appropriated all funds that it collects. Given the legislative history of the Zoo as it relates to the Monorail bonds default, the only reasonable construction of the above language is that the Zoo is provided an open and continuous appropriation of its receipts.

The Minnesota Zoo requests that the Attorney General’s Petition be granted and that the draft of the Attorney General’s proposed Order be issued. The Zoo believes that the paragraph of the proposed order which authorizes the Special Master to construe statutes which allow continuing appropriations will allow the Zoo to file a petition with the Special Master.

Finally, the Petitioner requests that it be permitted to participate in this action either as an intervener, a petitioner in the Special Master’s Proceeding as contemplated by the Attorney General’s Order, or as an amicus.

June 22, 2011

  
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