

FILED
Court Administrator

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

JUL 11 2011
By  Deputy

SECOND JUDICIAL DISTRICT

In re Government Shutdown Litigation,

Case Type: Civil
Court File No. 62-CV-11-5203

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

**ORDER REGARDING PETITIONS
OF THE PORT AUTHORITY OF
ST. PAUL, THE MINNESOTA
TRUCKING ASSOCIATION, AND
MINNESOTA RECOVERY
CONNECTION**

On June 23, 2011, the undersigned heard oral argument pursuant to the Motion of Petitioner Lori Swanson, Attorney General for the State of Minnesota, for temporary funding of the executive branch. On June 29, 2011, the Court issued its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 29, 2011, the Court appointed retired Minnesota Supreme Court Chief Justice Kathleen Blatz as Special Master to hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On July 5, 2011, July 7, 2011, and July 8, 2011, Special Master Blatz conducted evidentiary hearings regarding Petitioners seeking state funding as providers of critical core functions of government.

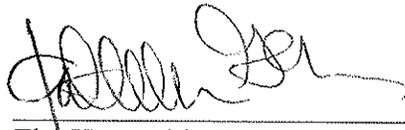
The Court accepts and adopts the attached findings of the Special Master subject to modification pursuant to Minn. R. Civ. P. 53.07(b) with respect to the requests of government offices and petitions brought by programs (hereinafter listed). Based on the file, proceedings, and recommendations, the Court makes the following ORDER:

1. The petition filed by the Port Authority of St. Paul is granted as the work required is an emergency repair analogous to “emergency highway repair,” which is allowed in the June 29, 2011 order.
2. The petition filed by the Minnesota Trucking Association is denied.
3. The petition of Minnesota Recovery Connection is denied.

Dated:

7-16-11

BY THE COURT:



The Honorable Kathleen R. Gearin
Chief Judge
Ramsey County District Court

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF THE PORT AUTHORITY
OF SAINT PAUL**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 8, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General for the State of Minnesota; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Attorney Eric Larson, Assistant City Attorney and General Counsel; and Kelly A. Jameson, Vice President of Property Development, Saint Paul Port Authority, appeared on behalf of Petitioner.

Based upon the arguments of counsel at the hearing, the Special Master makes the following:

Recommendation

1. The Court should **CLARIFY** that its Order authorizes the Minnesota Department of Natural Resources (“DNR”) to issue a permit to the Saint Paul Port Authority (“Port Authority”) to continue and complete a routine maintenance dredge at its Southport Terminal.

Concerns of Petitioner

1. Petitioner seeks leave from the Court to complete routine maintenance dredging at one of its four public terminals pursuant to a permit issued on June 27, 2011. The DNR previously

authorized certain maintenance work necessary to prevent the waterway from becoming inaccessible to barge traffic and impairing interstate commerce.

Analysis

1. The Port Authority was created by the State of Minnesota in 1932 pursuant to Minnesota Statute section 469.049 for the purpose of operating the ports at the Mississippi River in the City of St. Paul. The Port Authority conducts routine maintenance of the ports, including dredging terminals as necessary. The Port Authority has an ongoing permit with the DNR which may be reactivated on an as-needed basis.

2. The Port Authority owns four public terminals, one of which is identified as the Southport Terminal. The Southport Terminal serves three river shipping customers, with four or five barges coming in each week. Each barge contains 1,500 tons of product, approximating 6,000 tons of product each week. Products include feed, chemicals to make drinking water safe, and recycled metals. In addition, the Port Authority has a contract with the U.S. Army Corp of Engineers for the deposit of its dredge material.¹ The Port Authority is an international port which facilitates the shipping of commodities to and from local, national and international markets.

3. Approximately a month ago, tenants at the Southport Terminal notified the Port Authority that silting problems were occurring and barges were “bottoming out” as a result of the shallow water. On the strength of this information, the Port Authority sought reactivation of its permit on June 17, 2011 for routine maintenance dredging. In the meantime, rainfalls temporarily raised the water-levels and obviated the need for immediate dredging.

¹ Petitioner notes that the Court’s Order recognizes the constitutional requirements of the Supremacy Clause of the United States Government respecting contractual obligations with the United States.

4. On June 27, 2011, the Port Authority received a permit for maintenance dredging at the Southport Terminal from an Area Hydrologist with the DNR. However, by letter dated June 30, 2011, the DNR temporarily terminated the Port Authority's permit for maintenance dredging during the state shutdown. This termination letter applied to all DNR permits authorizing work in Public Waters due to the unavailability of DNR hydrologists during the shutdown. The Port Authority's permit requires it to notify the DNR Area Hydrologist five days prior to the commencement of any work and five days after completion.

5. The Court's Order states that the Statewide Contingency Response Team has established four statewide priority service definitions to meet its objectives during a government shutdown. (Order Ex. A III(A).) Priority 1 Critical Services as those relating to the "immediate threat to public health and/or safety." (*Id.*) This list expressly includes "[c]ontinuation of transportation safety functions and the protection of transport property" and the "[p]rotection of...waterways...owned by the government." (*Id.*; *see also* pp. 5-6 ¶ 18 for the Court's reference to the federal government's designation of certain activities as core or essential services pursuant to the OMB Memorandum). More explicitly, in Exhibit A under "Natural Resources," the Court has deemed "dike/water control structure management" as a critical core function. (*Id.* Ex. A.) Dikes clearly are involved with controlling water levels. While different from dike operation, dredging also affects functional water levels.

6. While not directly on point, the Court's Exhibit A "Transportation" category also deems "Emergency Highway Repair" as a critical core function. The silting problem in the river bed controlled by the Port Authority is analogous to an "Emergency Highway Repair" in the Special Master's estimation, as the silting may impede traffic or block passage.

7. The Special Master heard testimony that the water level is going down daily and Southport Terminal is in danger of becoming impassable the week of July 11, 2011.

8. The Special Master recommends that the Court clarify the Order as authorizing the necessary permit and minimal staffing at the DNR to allow the Petitioner to dredge the port in order that it remain passable.² Permitting such dredging is a critical core function directly related to “the maintenance and preservation of public property.” (*Id.* p. 15 ¶ 4.)

Dated: July 11, 2011



The Honorable Kathleen A. Blatz
Special Master

² Based upon this recommendation, the Special Master need not address Petitioner’s proposal to hire a private hydrologist to oversee completion of the work.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**SPECIAL MASTER
RECOMMENDATIONS FOR THE
MINNESOTA TRUCKING
ASSOCIATION**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 5, 2011. Present before the Special Master were Lori Swanson, Attorney General; Alan Gilbert, Solicitor General and Deputy Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; John Hausladen, President of the Minnesota Trucking Association; and Adam Helseth, Director of Government Affairs for the Minnesota Trucking Association.

Based upon the testimony at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request to order funding for the continued operation of rest stops and continued commercial licensing and credentialing services by the Division of Vehicle Services ("DVS") as critical core functions of government should be **DENIED**.

Concerns of Petitioner

1. Petitioner requests that the Court designate the operation of public rest areas a critical core function of government that should remain funded during the ongoing government shutdown because these rest areas are necessary to ensure that commercial truck drivers in

Minnesota have access to safe areas where they can stop to take their federally required rest breaks.

2. Petitioner requests that the Court order the continued funding of DVS sufficient to permit the Division to perform certain commercial-driving licensing and credentialing services because the services are critical core functions of government and authorized under Supremacy Clause principles.

Analysis

1. Petitioner represents approximately 700 trucking companies and allied firms who have been affected by the ongoing government shutdown.

2. Federal regulations require truck drivers to rest for 10 consecutive hours after being on duty for 14 hours each day. Truck drivers may legally stop to get this required rest at private truck stops and public rest areas. Petitioner argues that there are insufficient private truck stops in Minnesota, so the continued operation of public rest stops is required to ensure that truckers have access to locations where they may get their federally required rest.

3. Petitioner argues that failure to re-open the rest stops will affect the public safety of Minnesota citizens because it will force drivers to drive in excess of the federally allowable hours as they seek to find an acceptable parking stop or will park on highway shoulder and ramps thereby creating hazards for other drivers.

4. The failure to fund the continued operation of rest stops along Minnesota's highways is no doubt adversely impacting the ability of commercial truck drivers within Minnesota to adhere to their federally mandated rest requirements and will likely result in increased costs to drivers and trucking firms. However, the Court specifically determined in its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding of

June 29, 2011 (“Order”) that delay and increased costs “do not justify the Court in ordering the funding of non-critical core functions.” (Order p. 13, ¶ 37.) The continued operation of rest stops during the government shutdown does not fall within the strict limits of what is properly considered a critical core function under the Court’s Order.

5. Petitioner’s second request is that the commercial driver and vehicle licensing and credentialing services provided by DVS should be funded during the shutdown as critical core functions of government. Petitioner notes that roadside enforcement of state and federal trucking requirements in Minnesota is continuing during the shutdown, and objects to the fact that truckers are being denied the right to ensure compliance with state and federal law because of the suspension of DVS services during the shutdown.

6. DVS provides the credentialing services necessary for truck drivers to obtain the commercial driver’s license (“CDL”) required under both state and federal law to operate a truck in Minnesota. While Deputy Registrars across Minnesota have authority to issue new or renewal credentials, the transaction is not complete without the issuance of a photo license or CDL verification number from DVS. Neither of these DVS functions is ongoing during the shutdown. A trucker has a valid CDL when he or she receives either the permanent plastic license or a verification number via telephone prior to the expiration of the current license. Accordingly, truck drivers whose CDLs expired after June 30, 2011 are presently unable to get a valid renewed CDL.

7. It is obvious that the ongoing shutdown is affecting the ability of Minnesota truck drivers and trucking firms to receive and renew licenses and credentials required by state and federal law. This will no doubt have a severe economic impact upon the individuals affected as well as upon the State as a whole as the shutdown continues. However, this economic impact is

not sufficient for the Court to order continued funding of these licensing and credentialing services as a critical core function of government that must continue to be funded during the ongoing government shutdown.

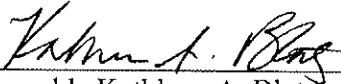
8. Petitioner also argues that failure to fund DVS operations during the shutdown puts Minnesota in violation of contracts with the Federal Motor Carrier Safety Administration (“FMCSA”). Grants provided to the State by the FMCSA require quarterly progress reports and warn that “[a]ny failure to make reasonable progress on the Project or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds from FMCSA to terminate this Agreement.” However, the Court noted in the Order that “[a]ny order of this Court allowing the Commissioner of the Department of Management and Budget to issue checks and process funds to pay for core functions and obligations that the State has pursuant to the Supremacy Clause of the United States Constitution should limit itself to only the most critical functions of government involving the security, benefit, and protection of the people.” (Order p. 9-10, ¶ 29.) The functions and obligations that the State has pursuant to grants and agreements with the FMCSA do not meet this stringent standard. The fact that the grants and agreements between the State and the FMCSA may be terminated because of the State’s failure to meet its obligations during the shutdown is not sufficient to order continued funding of services under the Order.

9. Finally, evidence was received that DVS also issues credentials called “apportioned” license plates, which are required to operate in interstate commerce. Registering these vehicles is part of a fifty-state system whereby the sales tax and registration fees assessed against the vehicle are apportioned based upon mileage accumulated in various states. Without DVS to issue these apportioned plates, Minnesota-based carriers cannot operate their trucks in

other states. If stopped roadside they will be put out of service. Limited use of “trip permits” are available, but only if the truck is registered under a “Y” or intrastate (Minnesota-only) plate. As raised by the Petitioner, this issue may implicate Dormant Commerce Clause principles regarding whether the State’s actions are improperly interfering with interstate commerce. (*See Chapman v. Comm’r of Rev.*, 651 N.W.2d 825 (Minn. 2002) (“Although the Commerce Clause represents an affirmative grant of power to Congress, it has long been held to impliedly contain a negative command, commonly referred to as the ‘dormant’ Commerce Clause, that the states may not discriminate against or unduly burden interstate commerce.”)).

10. The Special Master recommends that the Court deny the Petitioners’ request on the basis that the performance of the services requested is not a critical core function of government. As to the potential dormant Commerce Clause issues, the Special Master declines to make any recommendation. The Court’s Order does not address Commerce Clause principles and without further guidance from the Court, such issues are not properly before the Special Master.

Dated: July 11, 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

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

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF MINNESOTA RECOVERY
CONNECTION**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 7, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; Nell Hurley, Executive Director of Petitioner Minnesota Recovery Connection; Shelly Ford and Jason Knox.

Based upon the testimony received at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request for continued funding of its chemical-dependency recovery treatment programs during the ongoing government shutdown should be **DENIED**.

Concerns of Petitioner

1. Petitioner seeks the continued funding of its recovery-support services to chemically-dependent Minnesota.

Analysis

1. Petitioner provides services to chemically dependent Minnesotans who are continuing the path to recovery after receiving chemical-dependency treatment. The services provided by Petitioner do not relate to treatment of the acute phase of addiction, rather Petitioner provides ongoing recovery-support services to individuals who have already received some type of treatment.

2. Petitioner argues that funding of its recovery programs should continue under the Court's Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2011 (the "Order") because it is essential to the health and safety of the public and is mandated under the Supremacy Clause principles set forth in the Order.

3. Petitioner's programs are funded by federal dollars disbursed to the State under a federal Substance Abuse and Mental Health Services Administration grant. These federal pass-through funds are not subject to any state matching requirement. Grants under this program were not identified by the Department of Human Services as necessary to preserve critical core functions in Attachment 1 provided to the Special Master by the Office of the Governor on July 4, 2011.

4. Petitioner's programs are offered free to anyone who may need them. While these services are known to the judiciary and may be recommended to defendants, these services are not part of any mandatory participation requirements imposed by the Court or probation officers on offenders.

5. Petitioner seeks funding for its two main programs – a telephone recovery support program and a recovery coaching program. However, Petitioner seeks continuation of all of its

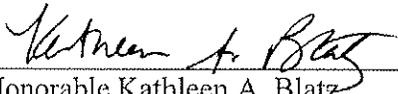
funding, including funding for its advocacy work, which brings visibility to the recovery community.

6. The recovery-support services provided by Petitioner are no doubt critical to the long-term health and sobriety of participants. However, the Court has recognized that

[n]umerous Minnesota non-profit organizations have filed to either intervene in the proceedings or to participate as amicus curiae. They provide services to vulnerable clients. These clients may suffer hardships and fail to make the progress of which they are capable without the assistance of these non-profits. Some non-profit entities will not survive without state appropriations. Neither the good services they provide nor the fact that they may cease to exist without state funding is sufficient cause to deem their funding to be a critical core function of government and to overcome the constitutional mandate in Article XI.

(Order p. 10-11, ¶ 31.) Accordingly, the Special Master recommends that Petitioner's request for continued funding be denied by the Court.

Dated: July 11, 2011



The Honorable Kathleen A. Blatz
Special Master