

FILED  
Court Administrator

STATE OF MINNESOTA  
COUNTY OF RAMSEY

JUL 15 2011  
By  Deputy

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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

In re Government Shutdown Litigation,

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

**ORDER REGARDING THE  
PETITION OF PRIOR LAKE  
ROTARY CLUB FOUNDATION**

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 14, 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).

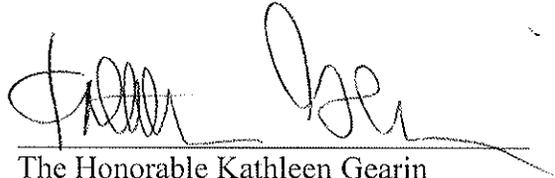
Based on the file, proceedings, and recommendations, the Court makes the following

ORDER:

1. The petition of Prior Lake Rotary Club Foundation is denied.
2. The attached memorandum is incorporated into this order.

Dated: 7-15-11

BY THE COURT:



The Honorable Kathleen Gearin  
Chief Judge  
Ramsey County District Court

## **Memorandum**

While clearly this is not a critical core function, the Court requests that the Minnesota Department of Health take another look at this situation, in light of the damage done to this charitable organization, and that there is a high probability that the budget issues will be resolved next week.

STATE OF MINNESOTA  
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DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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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 PRIOR LAKE ROTARY  
CLUB FOUNDATION**

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This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 14, 2011. Present before the Special Master were Jacob Kraus, Assistant Attorney General for the State of Minnesota, and Joseph Cassioppi, Special Counsel to the Office of the Governor. Attorney Adam Blahnik and David Card, Rotary Club of Prior Lake Members, appeared on behalf of Petitioner.

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

**Recommendation**

1. Petitioner's request that the Court authorize the Minnesota Department of Health ("DOH") to review and issue a Special Event Food Stand license to enable Petitioner to serve alcoholic beverages should be **DENIED**.

**Concerns of Petitioner**

1. Petitioner seeks an order from the Court compelling DOH to issue a Special Event Food Stand license to Petitioner in order that it may serve alcoholic beverages at its annual one-day Lakefront Jazz & Blues Festival ("Jazz Fest") music event on July 16, 2011. Without proper licensing, Petitioner and other similarly-situated nonprofit organizations will face severe

hardship, exposing them to personal financial liability and substantially reducing the monies raised for worthwhile charitable causes.

### **Analysis**

1. Petitioner is a nonprofit organization which funds local, national and international Rotary projects. It holds a one-day music event on an annual basis for the purpose of raising funds to support its worthwhile mission. Petitioner previously filed a request to have the Jazz Fest designated as a "Community Festival" within the City of Prior Lake, which has since been approved. Petitioner has also contracted with several food vendors who are properly licensed to serve food at Petitioner's event. In order to provide alcohol at the music festival, Petitioner applied for an Outdoor Public Use Permit and submitted an application to the State for validation. Due to the government shutdown, the permit was not processed. In an effort to find alternative options, Petitioner partnered with The Cove, Inc. ("The Cove"), a restaurant and bar in Prior Lake, Minnesota, to utilize its liquor license for the Jazz Fest.

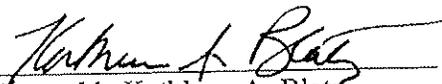
2. Petitioner subsequently became aware that it needed a Department of Health Special Event Food Stand license to serve alcohol at the Jazz Fest. Due to the government shutdown, Petitioner is unable to secure the necessary licensing. Although the DOH has a skeletal level of staffing available during the shutdown to conduct a minimum number of investigations, the licensing application review function is not operational and funding has not been appropriated for that purpose. The Special Master heard testimony that the DOH has over 500 applications awaiting approval that they cannot review due to the shutdown.

3. Petitioner argues its request implicates food safety and the public welfare. Petitioner moves the Special Master to adopt the determinations of the federal Office of Management and Budget, which provided that activities relating to the "safe use of food, drugs, and hazardous

materials” constitute a critical core function of government. (Order pp. 5-6 ¶ 18.) The Special Master is sensitive to the fact that Petitioner, like other nonprofits, is facing a severe negative economic impact due to the government shutdown. Petitioner’s inability to secure proper licensing will have a severe impact on the organization. Alcohol sales constituted 90% of Petitioner’s gross profit during last year’s event. Petitioner’s organization is run by the dues of its individual members, who are liable for any losses. Thus, the Petitioner may face bankruptcy.

4. Despite the critical effects to Petitioner, the Special Master’s recommendation must be informed by the Court’s Order. The Order recognizes that some nonprofit entities “will not survive” without state appropriations and licensing, but that such a regrettable result is not a sufficient cause to deem requests such as these to be a critical core function of government “and to overcome the constitutional mandate in Article XI.”<sup>1</sup> (Order p. 10 ¶ 31.) Because the Judiciary is constitutionally restricted in its ability to fund government or private services, the Special Master recommends that the Court deny Petitioner’s request.

Dated: July 14, 2011

  
The Honorable Kathleen A. Blatz  
Special Master

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<sup>1</sup> The Court adopted a similar application of the effect of the shutdown on worthwhile nonprofit organizations in its Order Regarding Petitions of Crawl 4 The Cure. Petitioner is referred to the disposition of that Petition for a further understanding of this recommendation to deny.