

STATE OF MINNESOTA

FILED
Court Administrator

DISTRICT COURT

COUNTY OF RAMSEY

JUL 8 2011

SECOND JUDICIAL DISTRICT

By BT Deputy

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

**PETITION FOR TEMPORARY
FUNDING NECESSARY TO
PROTECT RIGHTS OF
CITIZENS**

**PETITION OF AMERICAN LEGION POST 567, d/b/a LIBERTY RESTAURANT AND
BAR; TRIPLE ROCK SOCIAL CLUB; AND MINNESOTA LICENSED BEVERAGE
ASSOCIATION**

TO: The Honorable Kathleen Blatz, Special Master, c/o Christopher Channing,
christopher.channing@courts.state.mn.us;

Court Administrator, Ramsey County District Court, Ramsey County Courthouse,
15 W. Kellogg Blvd., St. Paul, MN 55012.

Petitioners American Legion Post 567, d/b/a Liberty Restaurant and Bar; Triple Rock Social Club; and Minnesota Licensed Beverage Association petition the Special Master for an order requiring temporary funding of the executive branch of government necessary to provided equal protection of the laws, pursuant to the Bill of Rights of Article 1, § 2 of the Minnesota Constitution, and pursuant to the Fourteenth Amendment to the United States Constitution. For cause, Petitioners incorporate the Affidavits of Norman Freske, Erik Funk, and Frank Ball; their Memorandum of Law; and their proposed order and state:

ISSUES PRESENTED

1. Is the protection of rights of citizens under the Minnesota and United States Constitutions a core function of the executive branch of government?

2. Does the executive branch deprive Petitioners of equal protection of the laws by denying license renewals necessary for them to remain in business by reason of the happenstance that their licenses expired after the government shutdown?

3. Is temporary funding of the limited ministerial clerical functions necessary to issue license renewals necessary to preserve and protect the constitutional rights of Minnesota citizens?

JURISDICTION

4. In her Conclusion of Law No. 2 of her Order of June 29, 2011 (the "June 29th Order"), the Honorable Kathleen R. Gearin found that this Court enjoys jurisdiction to direct that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. See Minn. Stat. §§ 484, 542.01.

5. In paragraph 13 of the June 29th Order, the Court appointed the Honorable Kathleen Blatz, Retired Chief Justice of the Minnesota Supreme Court, as Special Master "to hear and make recommendations to the Court, as necessary, regarding any issue raised by Petitioner or others relating to the application of this Order."

6. In her Conclusion of Law No. 4, Judge Gearin found: "Core functions include ... the protection of rights of citizens under the Minnesota and United States Constitutions."

7. Petitioners' constitutional rights as citizens have been violated by the government shutdown and they enjoy standing to petition the Special Master to recommend the limited and temporary funding necessary to redress the constitutional violation.

PARTIES

8. Petitioner American Legion Post 567, d/b/a Liberty Restaurant and Bar ("Liberty") has been a licensed beverage retailer in St. Michael, Minnesota since 1946. It is a not-for-profit enterprise whose net revenues are used for community purposes.

9. Petitioner Triple Rock Social Club ("Triple Rock") is a retailer of licensed beverages with alcohol content in excess of 3.2%. It is located at 629 Cedar Avenue South, Minneapolis, Minnesota 55454.

10. Petitioner Minnesota Licensed Beverage Association ("MLBA") is a trade association that, since 1952, represents the interests of licensed beverage retailers in the State of Minnesota.

REGULATION OF RETAILERS

11. Alcohol is a highly regulated commodity. Without the required permits, retailers cannot legally remain in business.

12. One regulatory requirement for retailers is to obtain a "permit to purchase alcoholic beverages containing more than 3.2 percent of alcohol by weight from any manufacturer or wholesaler or their agent or representative." Minn. Admin R. 7515.0210 Subp. 3. The identification cards issued for this purpose are commonly known as "Buyer's Cards."

13. Wholesalers are forbidden to sell alcoholic beverages containing more than 3.2 percent of alcohol to retailers who lack a Buyer's Card. The status of the retailers licensure is maintained by Alcohol and Gambling Enforcement on an electronic database. Given the serious penalties that would attend a violation, wholesalers are diligent in checking the status of a retailer's Buyer's Card before completing a sale.

GOVERNMENT SHUTDOWN

14. Minnesota's fiscal year expired on June 30, 2011 without enactment of a budget.

15. Article XI, Section 1 of the Minnesota Constitution provides that "no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law."

16. However, the legislature may not use its appropriation powers to abridge the core functions of the executive branch. June 29th Order, Conclusion of Law No. 3.

17. "Core functions include matters relating to the life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitutions, and the maintenance and preservation of public property." June 29th Order, Conclusion of Law No. 4.

18. In response to the failure to appropriate funds for fiscal 2011-12, the Alcohol and Gambling Enforcement Division of the Minnesota Department of Public Safety ("AGED") determined that it would, as a core function, enforce the laws regulating alcohol, but that it would not expend the resources necessary to allow retailers to comply with those laws.

19. In particular, AGED has suspended the issuance of renewed Buyers Cards necessary for retailers to purchase alcoholic beverages. However, it has defined as illegal and subject to enforcement action the purchase of alcoholic beverages by a retailer whose Buyer's Card was not renewed by reason of the government shutdown.

EFFECT ON RETAILERS

20. Petitioner Liberty's Buyer's Card expired on June 30, 2011. It cannot renew its Buyer's Card by reason of the government shutdown. Wholesalers will no longer sell alcoholic beverages to Liberty.

21. Retailers commonly maintain no more than 1 to 2 week's inventory. Liberty orders new stock on a weekly basis.

22. As a consequence of its expired buyer's card, and despite efforts to stockpile prior to June 30, 2011, Liberty has only 10 days of inventory remaining.

23. Close to one half of Liberty's sales consist of licensed beverages, a substantial portion of which is beer. While food sales are strong, the inability to sell a full complement of licensed beverages will drive away food customers. Therefore, Liberty anticipates losing more than one half of all its sales as a direct result of the loss of a renewed buyer's card.

24. Liberty has a staff of 41 people. Given the impending loss of more than one half of its business, Liberty is contemplating closing the restaurant and bar.

25. Absent a buyer's card, staff and customers will go elsewhere – to retailers who were lucky enough, by happenstance, to have had their buyer's cards renewed prior to the June 30th shutdown. Such cards are renewed annually on a rolling basis throughout the year. There are hundreds of other retailers suffering the loss of a buyer's card. And there are many other retailers who by sheer luck will be able to stay in business during the shutdown because they were able to renew their buyer's cards.

26. An after-the-fact damages award from a lawsuit against the State of Minnesota for arbitrarily denying the permits necessary for Liberty to remain in operation

will not adequately compensate Liberty. Customer goodwill, loyal staff, and continued support of the community with revenues from the operations cannot be replaced once lost. The loss is irreparable. A damages award will not adequately compensate Liberty for this loss.

27. Triple Rock's permit expired on July 1, 2011. Triple Rock is able to fulfill all of the requirements for a renewed buyer's card, but is unable to obtain a new buyer's card because of the shutdown of the Minnesota government.

28. By reason of the shutdown of the Minnesota government, Triple Rock has not received a renewed buyer's card. Its existing buyer's card is expired. Wholesalers will no longer sell alcoholic beverages to Triple Rock.

29. Retailers commonly maintain no more than 1 to 2 week's inventory. Triple Rock orders new stock on a weekly basis. Beer in particular has a limited shelf life and is considered by the industry to be perishable. It cannot be stockpiled. Nor is space and money available for extensive stockpiling of inventories of alcoholic beverages.

30. As a consequence of its expired buyer's card, and despite efforts to stockpile prior to June 30, 2011, Triple Rock has only 1 week of inventory remaining.

31. Approximately 75% of Triple Rock's sales consist of licensed beverages. Triple Rock has a staff of 40 people. It cannot meet payroll without the ability to sell licensed beverages.

32. Triple Rock books live bands on a regular basis throughout the year. Such entertainment is an integral part of Triple Rock's business plan. Absent a renewal of the buyer's card, Triple Rock will need to shut down and will be forced to break its entertainment contracts. In addition to creating potential liability, this will destroy Triple

Rock's reputation and good will in the entertainment community, and will irreparably harm its business.

33. Absent a buyer's card, staff and customers will go elsewhere – to retailers who were lucky enough, by happenstance, to have had their buyer's cards renewed prior to the June 30th shutdown.

34. Triple Rock's business interruption insurance does not cover government shut-downs.

35. An after-the-fact damages award from a lawsuit against the State of Minnesota for arbitrarily denying the permits necessary for Triple Rock to remain in business will not adequately compensate Triple Rock. Customer goodwill, loyal staff, and good relations with entertainment agents and bands cannot be replaced once lost. The loss is irreparable. A damages award will not compensate Triple Rock for the loss of a business built up over the past 13 years.

36. The experience of Liberty and Triple Rock is representative of hundreds of retailers whose Buyer's Cards have expired and cannot be renewed by reason of the government shutdown. Alcohol and Gambling Enforcement aggravated the problem by closing its doors at noon on June 29, 2011. As a consequence, a number of retailers who attempted to renew their Buyer's Cards on June 29 and June 30 were unable to do so.

37. Many retailers – some with 50 to 75 years of continuous operation – face imminent and irreparable loss of business as a result of the arbitrary renewal date of their Buyer's Cards

38. There are now two classes of retailers in this State: those lucky enough to have their cards renewable before June 30 and those who face imminent loss of business and livelihood by reason of a post-shutdown renewal date.

REMEDY

39. MLBA Director Frank Ball has discussed this issue with the attorney for the Commissioner of Public Safety and with the Interim Director of Alcohol and Gambling Enforcement. On behalf of Minnesota retailers, Ball requested that the Director issue a Memorandum of Understanding certifying to wholesalers that the retailer in question qualified for a renewed Buyer's Card and that a sale could be effected without enforcement action. The Commissioner and Interim Director refuse to issue any such certification.

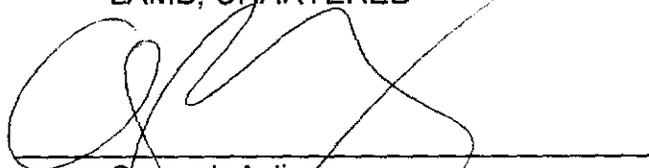
40. Based on Mr. Ball's experience as past Director of AGED, to process the Buyer's Card renewals, verify entitlement, and manage the electronic database will require the services of a clerical employee working half-time.

41. The equal protection of the laws guaranteed by the Minnesota and federal Constitutions is a core function of the executive branch of government. The limited funding of one part-time clerical employee necessary to review and issue Buyer's Cards and enter same on the electronic database will allow the Department of Public Safety to provide Minnesota citizens the equal protection of the laws.

42. The Court should order the executive branch to re-employ the clerical staff necessary to review and issue Buyer's Cards and to enter same on the electronic database.

Dated: July 8, 2011.

McGRANN SHEA CARNIVAL STRAUGHN &
LAMB, CHARTERED

A large, stylized handwritten signature in black ink, appearing to read 'Corey J. Ayling', is written over a horizontal line.

Corey J. Ayling
Minn. Reg. No. 157466
Joseph T. Bagnoli
Minn. Reg. No. 0237073

2600 U.S. Bancorp Center
800 Nicollet Mall
Minneapolis, MN 55402

*Attorneys for Petitioners Liberty, Triple Rock,
and MLBA*